

Q Governor's Advisory Council on
9 Corrections and Criminal Justice
MT Policy

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***GOVERNOR'S
ADVISORY
COUNCIL ON
CORRECTIONS AND
CRIMINAL JUSTICE
POLICY***



***FINAL REPORT
January 1995***

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DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES



MARC RACICOT, GOVERNOR

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January 17, 1995

Marc Racicot
Governor
State of Montana
Capitol Station
Helena MT 59620

RE: Governor's Advisory Council on Corrections and Criminal Justice Policy
Final Report

Dear Governor Racicot:

On behalf of the Council on Corrections and Criminal Justice Policy, attached please find the Council's final report. Following almost a year of deliberations, the Council is recommending a series of proposals designed to address key deficiencies in our criminal justice system. These proposals address sentencing reform; enhanced monitoring, detection and supervision of sex offenders; and expanded prison capacity.

To implement these initiatives and the assistance of the Department of Corrections and Human Services, the Council crafted the following legislative proposals:

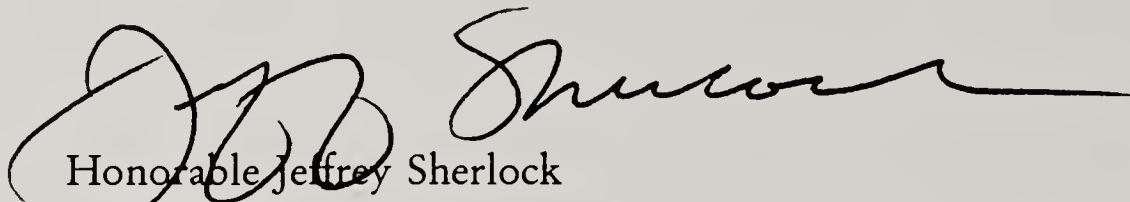
- Establishing regional correctional facilities
- Lifetime sex offender supervision and registration
- Sex offender DNA registration
- Truth in sentencing and good time reform
- Establishing a Montana Sentencing Commission

The Council's work is detailed in the minutes of the attached report and summarized in the executive summary.

Advisory Council Final Report
January 17, 1995
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We appreciate the opportunity to work together and recommend these significant and creative solutions to problems facing all Montanans. Please don't hesitate to contact me if you have questions or concerns.

Sincerely,



Honorable Jeffrey Sherlock
Chairperson

RD/sab

(PROPOSED)
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Final Report

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(PROPOSED)
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TRUTH IN SENTENCING SUBCOMMITTEE MINUTES

EXECUTIVE SUMMARY

Governor's Advisory Council
on
Corrections and Criminal
Justice Policy

*Governor's Advisory Council on
Corrections and Criminal Justice Policy*

EXECUTIVE SUMMARY

I. CHAIRPERSON APPOINTMENTS

Judge Jeffrey Sherlock was elected Chairperson of the Governor's Advisory Council on Corrections and Criminal Justice Policy. Mike Salvagni, Gallatin County Attorney, was elected Vice Chairperson of the Council. Three subcommittees formed as a result of the issues the Council decided needed to be addressed were: Regional Correctional Facility Subcommittee, Cascade County Undersheriff John Strandell, Chairperson; Sex Offender Subcommittee, Gallatin County Attorney Mike Salvagni, Chairperson; and the Truth in Sentencing Subcommittee, Judge Ted Lympus, Chairperson.

II. MONTANA CORRECTIONS OVERVIEW

A. Department of Corrections and Human Services

The Montana Department of Corrections and Human Services consists of five divisions, managing a total of nine "institutions". The Corrections Division, which is one of the five divisions, encompasses:

- Montana State Prison in Deer Lodge
- Swan River Correctional Training Center (boot camp) in Swan Lake
- Women's Correctional System in Billings
- Probation and Parole Bureau

One Interstate Compact Office

Five Regional Offices

Sixteen District Offices

- Private Contracted Pre-Release Centers

Butte Pre-Release Center

Missoula Correctional Services, Inc.

Great Falls Pre-Release Center

Alternatives, Inc. (Billings)

The Department of Corrections and Human Services has 1,882.05 full-time equivalent positions (FTE) and a FY94-95 general budget of \$153 million.

B. Vision and Mission Statements

1. Department's Vision Statement:

The Department of Corrections and Human Services is recognized as professional and the best at what we do – not because we think so, but because we have earned the respect and trust of the public, our peers, and those we serve.

2. Department's Mission Statement

The Department of Corrections and Human Services serves all Montanans by providing a

continuum of services appropriate to a diverse group of people whose illnesses, disabilities, or offenses inhibit their full participation in society.

We are a partnership of skilled, dedicated, and innovative staff making a positive difference in the lives of those we serve.

We operate in an environment of openness and mutual respect while taking pride in, and responsibility for what we do.

3. Corrections Division (Revised) Mission Statement

Montana Corrections, as part of the criminal justice system, contributes to the protection of society by actively helping offenders return to the status of law-abiding citizens, while recognizing and appreciating the needs of victims. That help will be provided in a respectful, principle centered, dignified manner within a safe, secure and humane environment.

C. Population Statistics

The Corrections Division of the Montana Department of Corrections and Human Services manages approximately 1,300 inmates in the institutions, approximately 230 inmates in community corrections facilities (including pre-release centers and the boot camp), and approximately 5,000 probationers and parolees on community supervision. The population of offenders in the community has increased by 1,500 from 1992 to 1994. Most of the increase

in the community offender population has been absorbed by the Probation and Parole Bureau; however, pre-release centers have also seen a significant increase in residents.

D. Crime Rate

On a national level, Montana ranks 33rd for its crime rate. Montana ranks eleventh among the thirteen western states for its crime rate, with the violent crime rate in Montana being the lowest. Montana ranks twelfth in the Western Region for its incarceration rate.

E. Legislative Discussion

Legislative proposals discussed by the Council included truth in sentencing through good time and bad time reform, a flat 25% of time served prior to parole eligibility, and establishing a Sentencing Commission; lifetime supervision, residence registration and DNA registration of sex offenders; and establishing regional correctional facilities.

The Council also briefly discussed legislation requiring judges to explain their sentences. The Council expressed concern that requiring judges to explain their sentences might constitute grounds for appeal. However, the Council felt victims should be made aware of sentences as soon as possible.

The Council recommended and approved the following legislation be introduced to the 54th Session of the Montana Legislature:

- 1) **Truth in Sentencing** by requiring a minimum amount of time be served prior

to parole eligibility; simplifying good time by eliminating dangerous and non-dangerous sentencing designations; and eliminating good time for life sentences, requiring offenders sentenced to life to serve a minimum of thirty (30) years before becoming parole eligible;

- 2) Establishing a **Sentencing Commission** to study sentencing practices and guidelines and the effects of sentences;
- 3) Requiring convicted sex offenders to provide **DNA samples** for a data bank;
- 4) Requiring **sex offenders to register for life**; provisions to allow judges to sentence sex offenders to **lifetime supervision**;
- 5) Establishing **regional correctional facilities**.

The Legislative Council drafts of the proposed legislation are included in the legislative package section of this report.

F. Crime Bill Discussion

The Council reviewed possible impacts of the Federal Crime Bill relative to Montana's future corrections policy, planned facilities, and programs. At this time, the Council was unable to specifically identify any Crime Bill monies which would be available for Montana programs. However, it was noted there were two grants, Truth in Sentencing and Violent Offenders, available through the Crime Bill that Montana might be interested in.

G. Miscellaneous

Mike Lavin and Senator Chris Christiaens attended the National Congress on Crime in New

York in June 1994. Mike shared with the group valuable insight gained relative to mandatory sentencing, truth in sentencing, and early prevention of crime.

The remainder of this report will be devoted to addressing specific issues and recommendations of each subcommittee.

III. REGIONAL CORRECTIONAL FACILITY SUBCOMMITTEE

RECOMMENDATIONS

John Strandell, Chairperson

A. Introduction

The regional correctional facility concept was originally introduced by Rick Day, Director of the Department of Corrections and Human Services. The idea was to bring the State and counties together to work cooperatively. A regional correctional facility would consist of a county jail with a separate area (pod) to house state inmates. The pod would house medium and close custody state inmates. To date, the following counties that have expressed interest in participating in the regional correctional facility program include Hill, Ravalli, Cascade, Yellowstone, Dawson, Missoula, Gallatin, and Custer.

B. National Institute of Corrections Grant

The Department of Corrections and Human Services received a grant from the National

Institute of Corrections (NIC) for technical assistance relative to the regional correctional facility project. Mr. Ken Schulsen of NIC submitted a report to the Department. A steering committee was formed, per recommendation of the subcommittee and Mr. Schulsen's NIC report, to formulate regional correctional facility guidelines.

C. Budget Information

Budgetary concerns were expressed relative to the level of State support available or planned to assist with funding regional correctional facilities. It was noted funding for three regional prison pod facilities is already incorporated into the FY 96-97 executive budget.

D. Advantages and Disadvantages

The following are many advantages of building regional correctional facilities:

- The State would gain hard cell capacity without adding to the on-site population at Montana State Prison;
- Staff members of the regional correctional facilities will be full-time county employees;
- The facilities will be geographically placed throughout Montana, which will save on transportation and staffing costs;
- State and county revenues will be pooled, allowing counties necessary operating capital, as well as a greater variety and availability to inmate programming and other resources at a reduced expense to both the county and state;
- Counties will qualify to utilize managed health care and pharmacy programs, which will reduce medical costs;

- Sentenced state inmates will be housed closer to home;
- Additional bed space will be available to house federal inmates, which will assist in offsetting costs;
- Provides counties with funding support to build and operate jail facilities;
- The facilities will remain under local control through the Sheriff of each county;

Problems noted relative to the regional correctional facilities concept were:

- Gaining approval from the Legislature;
- Lack of trust between State and local governments;
- Reactions from communities to having inmates in the communities;
- Impacts on local social services.

E. Recommendation

The Regional Correctional Facility Subcommittee recommended the regional correctional facility concept be presented to the 1995 Legislature. The first facility proposed for construction is in Cascade County, where voters approved a local jail bond issue. To support the Council's decision to recommend regional correctional facilities to the 1995 Legislature, the Department of Corrections and Human Services, drafted the legislation, which is included in the legislative package section of this report.

IV. SEX OFFENDER SUBCOMMITTEE RECOMMENDATIONS

Mike Salvagni, Chairperson

A. Introduction

The mission of this subcommittee was to consider more stringent and progressive responses to sex offenses. The Sex Offender Subcommittee was formed to consider lifetime supervision of sex offenders. During the discussions, DNA registration of convicted sex offenders, lifetime registration of sex offenders, and public disclosure of the offenders' identity and addresses were considered and addressed.

B. General Discussion Regarding Sex Offenders

Sandy Heaton, Psychologist Specialist at Montana State Prison, noted the sex offender treatment program currently in place at Montana State Prison has been operating since 1975. Sandy noted there are currently 400 sex offenders incarcerated at Montana State Prison. Of the 400, approximately 119 are non-compliant with treatment. Approximately 1/3 of this population have the potential to leave prison untreated.

Statistics show the greatest risk of reoffense is within the first six months. The second time frame most common for reoffense happens fifteen (15) to twenty (20) years later. Ted Clack, Research Manager for the Department of Corrections and Human Services, related that incest offenders have the lowest risk for reoffense and rapists have the highest risk for reoffense. The average sentence received by sex offenders is five years, half of which is usually spent on probation and/or parole supervision. One out of every four sex offenders completes their sentence and is discharged from prison without any supervision, due to no suspended portion of a sentence having been issued by the sentencing judge.

Sandy Heaton further noted that sex offender treatment works for the majority of offenders. Sex offenders can be safely managed in the community through probation/parole supervision and sex offender treatment participation. Therefore, the reader can conclude lifetime supervision of sex offenders would provide continued treatment and necessary monitoring.

The following points of discussion explain the proposed legislation contained in the recommendation section of this subheading.

C. *Lifetime Supervision of Sex Offenders*

The Subcommittee obtained and reviewed existing information and Arizona laws regarding lifetime supervision and registration. Sandy Heaton, Psychologist Specialist at Montana State Prison, who provides sex offender treatment, and Mike Ferriter, the Probation and Parole Bureau Chief, support lifetime supervision of sex offenders. The Montana Sex Offender Treatment Association (MSOTA) providers also support lifetime supervision of sex offenders.

According to MSOTA, the treatment component of sex offender supervision is vital. MSOTA suggested treatment for convicted offenders be mandatory and included as part of the original sentence. In addition to the treatment component, MSOTA providers indicated they are discussing management of sex offenders relative to approving/disapproving employment and imposing house arrest for high risk offenders.

Lifetime supervision is not intended to mean life in prison for the offenders. Lifetime supervision legislation would be based on successful completion of the sex offender treatment program in Montana State Prison prior to release. Sex offenders sentenced to the Department of Corrections and Human Services for life will not become parole eligible. Three steps that need to be accomplished to enact lifetime supervision of sex offenders are passing the legislation, allocating funding for treatment, and increasing Probation/Parole Bureau staff.

A stipulation allowing sentencing judges to be able to grant reprieve from lifetime supervision was discussed but not recommended by the subcommittee.

D. Impact of Lifetime Sentencing of Sex Offenders

MSOTA treatment providers related community based sex offender treatment programs are more cost effective than prison treatment programs. However, the costs of community based treatment poses a significant burden on offenders. It was also mentioned that requiring offenders to pay for their own treatment imposes accountability and responsibility. However, because offenders are paying for their own treatment, which is expensive, they often can't afford to pay for their victims' treatment. The Department of Corrections and Human Services currently has legislation pending to provide \$110,000 for treatment funding. A portion of this money is planned to be used to assist indigent sex offenders with paying for community treatment costs.

The subcommittee discussed whether lifetime supervision should be mandatory following a

second conviction or left within the discretion of the judge. The discussion included the acknowledgement that lifetime supervision may be the best response to a first conviction in order to avoid a second offense. It was decided lifetime sentencing for sex offenders for a first offense should be discretionary for the judge.

Questions arose as to whether or not lifetime supervision of sex offenders would significantly impact probation and parole caseloads. Mike Ferriter, Probation and Parole Bureau Chief, noted because the number of repeat, or second time, sex offenders is so low, which is the most likely target group for lifetime supervision, this sentencing option will have only a minimal impact on caseloads. However, this impact is primarily dependent upon how often the judges choose to impose lifetime supervision. In any event, the fiscal impact of lifetime supervision has already been included in the budget.

E. Lifetime Registration of Sex Offenders

Along with lifetime supervision of sex offenders, the subcommittee discussed the issue of lifetime registration of sex offenders. Under current Montana law, sex offenders are required to register with local law enforcement for ten years. Even though the Department of Corrections and Human Services has a data base of registered sex offenders, the subcommittee felt ten years is not a long enough time for sex offenders to be registered, especially if sex offenders will be supervised for life. Additionally, sex offender registration is currently the responsibility of the sex offender. Lifetime supervision in conjunction with sex offender registration should ensure compliance. Further, suggestions from the subcommittee relative

to lifetime sex offender registration were for statewide registration, accomplished by a sex offender registration file being added to CJIN; public disclosure of sex offenders' names, according to discretion exercised by the Department; and increasing the statutory penalty for failing to register to a \$5000.00 fine and/or five years in prison.

F. *DNA Registration for Sex Offenders*

Deoxyribonucleic acid, found in chromosomes, is unique for every person except identical twins. Thus, DNA offers the potential to make positive identification of perpetrators from blood, semen, hair, or tissue samples found at a crime scene, provided they are convicted sex offenders with DNA already in the data bank. Twenty-six (26) states currently have laws allowing for DNA sampling of convicted sex offenders and violent offenders. DNA testing would also provide information to clear innocent suspects who are previously convicted sex offenders. DNA samples would be analyzed and stored in the lab at the Forensic Science Division of the Department of Justice in Missoula. Only law enforcement agencies would have access to the confidential DNA information. California currently has DNA registration for sex offenders and the law has yet to be challenged.

DNA registration orders will be discretionary for the sentencing judge based on the crime and surrounding circumstances.

The subcommittee reviewed New York state's current laws relative to DNA registration of sex offenders and decided to adopt the New York example.

G. Estimated Budget Information Relative to DNA Registration

Estimated costs for a facility to maintain DNA registration for sex offenders would be two full-time employees; \$100,000 yearly operating costs; \$72,000 constructions costs (to add one room to the State Crime Lab in Missoula); \$75,000 for equipment; and \$50.00 per test for materials. It was noted it will take from one and one-half to two years to get this project up and running. Montana might be able to access monies from the Crime Bill to support this project, provided it is in operation when the funds are released for bid. In any event, a proposal to establish DNA registration will be effective upon identification of a funding source.

H. Recommendations

The Sex Offender Subcommittee recommended the following legislation be introduced to the 1995 Legislature:

- DNA Testing for Sex Offenders, currently numbered LC0285;
- Lifetime Sentencing and Registration for Sex Offenders, currently numbered LC0286.

Please refer to the legislative package section of this report for the specific details surrounding this legislation.

V. TRUTH IN SENTENCING SUBCOMMITTEE RECOMMENDATIONS

Judge Ted Lympus, Chairperson

A. Introduction

Subcommittee members met with Montana State Prison officials to determine needs and the impact of a truth in sentencing law. The priority of the subcommittee was to address the truth in sentencing issue and ensure it would have a neutral impact on the prison population. The subcommittee felt simplicity is vital to judges and others to know exactly how long an inmate will serve on a sentence. It was noted the subcommittee should carefully consider offender management and motivation at Montana State Prison, as they are two very critical aspects relative to good time. The subcommittee felt eliminating good time accrual for inmates in maximum security was critical.

B. Truth in Sentencing and Good Time Information

The subcommittee addressed the controversial and confusing issue of good time. The subcommittee decided to propose inmates receive a flat thirty (30) days of good time per month; in addition, inmates will have to serve at least 25% of their sentence before becoming parole eligible. The truth in sentencing proposal does away with dangerous and non-dangerous designations at sentencing by essentially adopting the minimum time presently required under the dangerous offender designation. Further, the subcommittee recommended eliminating the 17-1/2 year rule pertaining to parole; abolishing good time for life sentences, requiring inmates to serve thirty (30) years, not fifteen (15), as is presently required; and eliminating early parole releases relating to overpopulation.

C. Montana Commission on Sentencing

The subcommittee proposed establishing a Montana Commission on Sentencing to study good

time, sentencing practices and guidelines, and the effects of sentences.

D. Recommendations

The Truth in Sentencing Subcommittee recommended two pieces of legislation:

- Truth in Sentencing, currently numbered LC0983;
- Commission on Sentencing, currently numbered LC0984.

Again, please refer to the legislative package section of this report for details of the above proposed legislation.

VI. CONCLUSION

The work of the Council and subcommittees was very productive. The Council provided specific recommendations designed around new solutions to long-standing problems, including improved detention; expanded prison capacity; supervision and penalties for sex offenders; and sentencing revisions.

Committee
and
Subcommittee

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GOVERNOR'S ADVISORY COUNCIL ON CORRECTIONS AND CRIMINAL JUSTICE POLICY

(continued - page 2)

TRUTH IN SENTENCING SUBCOMMITTEE

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EXECUTIVE ORDER

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State of Montana
Office of the Governor



Executive Order No. 6-94

EXECUTIVE ORDER CREATING THE
TRY ANOTHER WAY STATE EMPLOYEES (TAWSE) TASK FORCE

WHEREAS, the Helena area transportation plan envisions the need for \$83 million to address traffic problems in the next 20 years, but anticipates less than \$12 million in funding; and

WHEREAS, the plan anticipates that merely maintaining the existing road system at the optimal level would cost \$12 million during the 20 year planning period; and

WHEREAS, the City-County Transportation Coordinating Committee has approved the plan incorporating transportation demand management; and

WHEREAS, as the largest employer in Helena, State Government has a tremendous impact on traffic and travel patterns in Helena; and

WHEREAS, in order to encourage alternate forms of transportation, on May 12, 1993, I sent a letter to state elected officials, department directors, and executive

1 boards and commissions encouraging support for state
2 employee activities for "Try Another Way" Week; and

3 WHEREAS, state employees formed the Try Another Way
4 State Employees (TAWSE) Task Force, which has been meeting
5 regularly; and

6 WHEREAS, the TAWSE mission is to inspire state
7 employees to be more efficient in their work day travel by
8 promoting and facilitating walking, biking, carpooling,
9 vanpooling and public transportation.

10 NOW, THEREFORE, I, MARC RACICOT, Governor of the State
11 of Montana, by the authority vested in me by Article VI,
12 Section 4 of the Montana Constitution, and Section 2-15-201,
13 MCA, do hereby establish the Try Another Way State Employees
14 Task Force and instruct each agency director as follows:

- 15 1. To call for representatives from your agency who
16 are willing to serve on the TAWSE;
- 17 2. To annually select at least one agency
18 representative and an alternate, with whom you can
19 effectively work, to implement TAWSE's recommendations;
- 20 3. To provide for and encourage the active
21 participation of agency representative(s) and
22 alternate(s); and
- 23 4. To notify my office by no later than April 1, 1994
24 and by no later than December 1 of each year
25 thereafter, of your designated representative(s) and
26 alternate(s) to TAWSE.

1 This Order is effective immediately.

2
3 Given under my hand and the
4 GREAT SEAL of the State of
5 Montana, this 30th day of
6 March, 1994

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8
9 Marc Racicot
10 MARC RACICOT, Governor
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13 ATTEST:

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15 Mike Cooney
16 MIKE COONEY, Secretary of State
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LEGISLATIVE PACKAGE

- LC0285 DNA Sampling of Sex Offenders
- LC0286 Lifetime Sentencing of Sex Offenders
Lifetime Registration of Sex Offenders
- LC0924 Establishing Regional Jails
- LC0983 Truth in Sentencing
- LC0984 Establishing a Commission on Sentencing

Draft Copy

Printed 12:48 pm on December 12, 1994

LC0285

**** Bill No. ***

Introduced By *****

By Request of the Department of Corrections and Human Services

A Bill for an Act entitled: "An Act requiring certain sex offenders to provide dna samples; granting the department of justice the authority to promulgate rules; providing that dna records are confidential criminal justice information; establishing a dna identification index within the department of justice to maintain dna records; establishing uses for dna records; providing that dna records are not sealed under the youth court act; amending section 41-5-604, MCA; providing an immediate effective date; and providing a contingent termination date."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance concerning rules adopted for the withdrawal of blood samples.

It is the intent of the legislature that rules adopted by the department of justice will ensure that blood collections under this bill will be in such a manner that the health and welfare of the donor and testing personnel are not compromised.

Be it enacted by the Legislature of the State of Montana:

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NEW SECTION. **Section 1. Definitions.** As used in
[sections 1 through 7]:

- (1) "Department" means the department of justice.
- (2) "DNA" means deoxyribonucleic acid.
- (3) "DNA identification index" means the DNA identification record system established under [section 6].
- (4) "DNA record" means DNA identification information stored in the state DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis; for example, the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.
- (5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with [sections 1 through 7].
- (6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.
- (7) "Marker" has the meaning given to the word by department rule.

NEW SECTION. **Section 2. Establishment of state DNA**

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Identification Index. (1) The department may establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records. The DNA identification index is the central repository for DNA records in the state of Montana.

(2) The DNA identification index must include:

(a) DNA records for individuals convicted of a sexual offense, as defined in 46-23-502; and

(b) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.

(3) The DNA identification index and state forensic DNA laboratory must be compatible with the system of DNA identification utilized by other criminal justice agencies or private testing laboratories, to the extent necessary to permit the exchange of DNA information.

(4) The DNA records collected and stored in the DNA identification index may only contain information relating to the identification of individuals. Information that identifies a person that is the subject of a record must be limited to the that which is necessary to pursue criminal investigations and support statistical interpretation of results.

(5) The DNA identification index may be used:

(a) by law enforcement agencies for purposes of identification in the course of criminal investigations and proceedings;

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(a) to assist in the recovery or identification of human remains, including identification of missing persons; and

(c) if information allowing persons to be identified is removed, for a population statistics database and for identification, research, and protocol development for forensic DNA analysis and quality control.

NEW SECTION. Section 3. Collection of samples and maintenance of data. (1) Following entry of judgment, a person convicted of, or found under 41-5-521 to have committed, a sexual offense, as defined in 46-23-502, must provide to a person or entity designated by the county attorney a sample of blood for DNA analysis to determine identification characteristics specific to the person.

(3) The blood sample must be collected, stored, and sent by the person or entity designated by the county attorney under subsection (1) to the department for entry in the state DNA identification index in accordance with rules adopted by the department with the advice of the department of health and environmental sciences.

(4) The state forensic DNA laboratory may perform DNA analysis only for those markers having value for law enforcement identification purposes.

NEW SECTION. Section 4. Release of DNA Records. (1) DNA records contained in the state DNA Identification Index may only be released for the following purposes:

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- (a) to federal, state, and local law enforcement agencies for law enforcement identification purposes;
- (b) for criminal defense purposes, to a defendant for whom there is a record, who is also entitled to samples and analyses held as part of the record;
- (c) to assist in the recovery or identification of human remains, including missing persons; and
- (d) if information allowing persons to be identified is removed, for a population statistics database and for identification, research, and protocol development for forensic DNA analysis and quality control.

(2) Requests for DNA records must be in writing, signed by the requesting party, and maintained on file at the state DNA identification index in accordance with rules adopted by the department.

(3) A defendant in a criminal proceeding is entitled to information in the state DNA Identification Index relating to the number of requests previously made for comparison searches relating to defendant and the names of the requesting parties.

NEW SECTION. Section 5. Expungement of DNA records. If a conviction is reversed, the DNA record relating to the charged offense must be expunged from the DNA identification index. The county attorney of the county in which the conviction occurred shall notify the department of a reversal of a sexual offense.

NEW SECTION. Section 6. Confidentiality of records of DNA

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testing. Except as provided in [sections 1 through 7], or unless the person that they relate to consents to the release, records, findings, and results of DNA testing are confidential criminal justice information subject to the dissemination provisions of Title 44, chapter 5.

NEW SECTION. **Section 7. Rulemaking authority.** The department of justice shall adopt rules to implement [sections 1 through 7].

Section 8. Section 41-5-604, MCA, is amended to read:

"41-5-604. Disposition of records. (1) All youth court records and law enforcement records except fingerprints, DNA records, and photographs pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction

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of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section shall not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601."

{ Internal References to 41-5-604: None. }

NEW SECTION. **Section 9. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 10. Coordination instruction.**
If the fifty-fourth legislature does not appropriate money to fund administration of [this act] by line item specifically referring to the program contained in this act, [this act] is void.

- END -

{ Drafter (or reviewer of draft submitted
to Legislative Council)

John MacMaster
Staff Attorney
Montana Legislative Council
(406) 444-3084 }

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Printed 2:35 pm on December 16, 1994

LC0286

**** Bill No. ***

Introduced By *****

By Request of the Department of Corrections and Human Services

A Bill for an Act entitled: "An Act allowing certain sex offenders to be sentenced to the department of corrections and human services for life, to be placed in an appropriate correctional institution or program; increasing fines for those offenses; providing that those persons must register as sexual offenders for the remainder of their lives unless a court finds that public protection no longer demands registration and the victim does not object; regulating the dissemination of material in the sex offender register; and amending sections 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-23-502, 46-23-506, and 46-23-507, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the

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offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ the offender shall be:

(a) imprisoned in the state prison for any term not less than 2 years or more than 20 years and may be fined not more than \$50,000; or

(b) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) "Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim."

{xInternal References to 45-5-502:

27-2-216	40-4-217	40-4-219	45-1-205
46-16-216	46-18-111	46-18-201	46-18-222
46-18-231	46-23-502}		

Section 2. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be:

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(a) imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222; or

(b) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$50,000.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be:

(i) imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222. ~~An act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.~~ or

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(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$50,000.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each

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offender shall be:

(i) imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222; or

(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$50,000.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

{xInternal References to 45-5-503:

27-2-216	40-4-217	40-4-219	41-5-206
45-1-205*	45-5-501	46-16-216	46-18-111
46-18-201	46-18-201	46-18-231	46-23-502}

Section 3. Section 45-5-504, MCA, is amended to read:

"45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying the person's own sexual desire ~~of himself~~ or the sexual desire of any person, exposes ~~his~~ the

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person's genitals under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, ~~he~~ the person shall be:

(i) fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term of not more than 5 years, or both; or

(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$10,000."

{ Internal References to 45-5-504:

27-2-216 45-1-205* 46-18-111 46-18-201 }

Section 4. Section 45-5-507, MCA, is amended to read:

"45-5-507. Incest. (1) A person commits the offense of incest if ~~he~~ the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact as defined in 45-2-101 with an ancestor, a descendant, a brother or sister of the

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whole or half blood, or any stepson or stepdaughter. The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be:

(a) imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both; or

(b) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall be:

(a) imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than \$50,000; or

(b) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$50,000.

(5) In addition to any sentence imposed under subsection

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(3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

{xInternal References to 45-5-507:

27-2-216	40-4-217	40-4-219	45-1-205
46-16-216	46-18-111	46-18-201	46-23-502}

Section 5. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) possesses material referred to in subsection (1)(d); or

(f) finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is of the nature

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described in those subsections.

(2) (a) ~~Except as provided in subsections (2) (b) and (2) (c),~~ a A person convicted of the offense of sexual abuse of children shall be:

(i) fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both; or

(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$10,000.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be:

(i) fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both; or

(ii) sentenced to the department of corrections and human services for placement by the department in an appropriate correctional institution or program for life. In addition, the offender may be fined not more than \$10,000.

(c) A person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1) (e), shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1) (d) through (1) (f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an

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activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

{xInternal References to 45-5-625:
27-2-216 40-4-217 40-4-219 40-8-111
41-3-102 45-1-205 45-5-620 46-18-111
46-23-502}

Section 6. Section 46-23-502, MCA, is amended to read:

"46-23-502. **Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-505, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a)."

{xInternal References to 46-23-502:
46-18-201 46-18-201 46-18-256}

Section 7. Section 46-23-506, MCA, is amended to read:

"46-23-506. **Duration of registration.** (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder

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~~of the person's life, except during a period of 10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10 year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which the person is in prison.~~

(2) ~~A~~ Except as provided in subsection (3), a convicted sexual offender's offender has a duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10 year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part during the remainder of the offender's life.

(3) At any time after 10 years have passed since the date of the sexual offender's last conviction of a sexual offense the sexual offender may petition the court that sentenced the sexual offender for the last conviction for an order relieving the sexual offender of the duty to register under 46-18-254, 46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender must mail a copy of the petition to the victim or victims of the last sexual offense for which the sexual offender was convicted, if alive. The court must consider any written or oral statements of the victim or victims. The court may grant the petition upon finding that:

(a) the sexual offender has remained a law-abiding citizen;
and

(b) continued registration is not necessary for public protection and relief from registration is in the best interests of society."

{Internal References to 46-23-506: None.}

Section 8. Section 46-23-507, MCA, is amended to read:

"46-23-507. **Penalty.** A sexual offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or more than 5 years or a fine not to exceed ~~\$250~~ \$5,000, or both."

{Internal References to 46-23-507: None.}

NEW SECTION. Section 9. **Dissemination of information in register.** Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

(1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, ^{if the department of corr. & human service believes that release of information concerning a sex offender is necessary for public protection,} the department of corrections and human services must petition the ^{district court for the Third Judicial District, or the} district court for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public, and the court must grant the order if the court finds that the information is necessary for public protection.

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NEW SECTION. Section 10. Codification instruction.

[Section 9] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section 9].

- END -

{ Drafter (or reviewer of draft submitted
to Legislative Council)
John MacMaster
Staff Attorney
Montana Legislative Council
(406) 444-3064 }

21,
AC092

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A BILL FOR AN ACT ENTITLED: AN ACT AUTHORIZING THE CREATION OF REGIONAL CORRECTIONAL FACILITIES; AUTHORIZING THE CONSTRUCTION OF REGIONAL CORRECTIONAL FACILITIES IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES AND LOCAL GOVERNMENTAL BODIES; AUTHORIZING THE LEASE/PURCHASE OF REGIONAL CORRECTIONAL FACILITIES BY LOCAL GOVERNMENTAL BODIES; AND ESTABLISHING CONTRACT TERMS AND TIME LIMITS FOR CONTRACTS TO CONSTRUCT AND OPERATE CORRECTIONAL FACILITIES.

Introduced at the request of Representative Marjorie I. Fisher, the Governor's Advisory Council on Corrections and Criminal Justice Policy and the Department of Corrections and Human Services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** This part shall be known and cited as the "Regional Correctional Facility Act".

NEW SECTION. **Section 2. Purpose.** It is the purpose of this part to provide a method by which state and local governments can make most efficient use of their powers and resources by enabling them to cooperate to provide services and facilities for the incarceration and rehabilitation of convicted felons. State and local governments are encouraged to use innovative means in accomplishing this purpose.

NEW SECTION. **Section 3. Definitions.** (1) As used in this part, the following definitions apply:

(a) "Regional correctional facility" means a correctional facility for the housing of convicted felons which is owned or operated by one or more of the following:

- (i) a local governmental unit;
- (ii) a multijurisdictional service district;
- (iii) an interlocal cooperation commission; and
- (iv) the department.

(b) "Multijurisdictional service district" means a district established in accordance with title 7, chapter 11, part 11.

(c) "Interlocal cooperation commission" means a commission established in accordance with title 7, chapter 11, part 2.

(d) "Department" means the department of corrections and human services.

NEW SECTION. **Section 4. Authority to enter into contracts.**
(1) The state of Montana, acting through the department, may contract with one or more local governmental units, multijurisdictional service districts, or interlocal cooperation commissions, for the housing and provision of services to inmates

sentenced to the department or any of its correctional institutions.

(2) The contract must be authorized and approved by the local governing body and the department. Such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties, including, but not limited to, the terms set forth in 7-11-105.

NEW SECTION. **Section 5. Contract terms.** (1) A contract authorized by [section 4] may include an agreement to jointly finance and construct a regional correctional facility, in whole or in part.

(2) Such an agreement may include an agreement for the state of Montana, through the long-range building program, to finance the construction of a regional correctional facility, in whole or in part.

(3) A regional correctional facility financed under this section may be constructed on real property owned by the state of Montana, by a local governmental unit, a multijurisdictional service district, an interlocal cooperation commission, or any combination thereof.

(4) The board of examiners may issue long-range building program bonds to finance the construction of a regional correctional facility authorized by this part.

NEW SECTIONS. **Section 6. Contract time limits pertaining to correctional facilities.** (1) A contract for the procurement of services associated with a regional correctional facility may not exceed a term of 20 years.

(2) A contract entered into pursuant to 53-1-203(3) may not exceed a term of 10 years.

NEW SECTION. **Section 7. Authority of the state to lease a state building and provide the lessee with an option to purchase.** The department of corrections and human services shall have the authority, as part of the long-range building program, to enter into a rental contract which provides an option for a local governmental unit, a multijurisdictional service district, or an interlocal cooperation commission to purchase a state building operated as a regional correctional facility.

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as a part of Title 53, chapter 30.

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Printed 10:15 am on December 28, 1994

LC0983

**** Bill No. ***

Introduced By *****

By Request of the Department of Corrections and Human Services

A Bill for an Act entitled: "An Act ^{implementing Title 46 - Sentencing by} making the time a prisoner will actually serve more apparent; changing good time, parole, and consecutive sentence provisions; abolishing good time as of January 31, 1997; abolishing the designation of criminals as dangerous or nondangerous for purposes of parole; amending sections 44-2-601, 46-18-401, 46-18-402, 46-23-201, 46-23-202, 46-23-216, 46-23-217, 46-23-426, 53-30-105, and 53-30-102, MCA; repealing sections 46-18-404 and 53-30-105, MCA; and providing effective dates."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-2-601, MCA, is amended to read:

"44-2-601. Notification of escape or release from confinement. (1) The notice required by subsection (2) must be given if:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes or is released from confinement;

(b) a person confined in an institution other than a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a prison or other state institution after conviction of a criminal offense

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involving the use or threat of physical force or violence ~~or after being designated as a dangerous offender under 46-18-404~~ escapes or is released from confinement; or

(c) a person confined in a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the use or threat of physical force or violence ~~or after being designated as a dangerous offender under 46-18-404~~ escapes from confinement.

(2) If a person referred to in section (1) escapes or is released from confinement, the institution in which the person was confined shall notify:

(a) the sheriff or other law enforcement officials in the county in which the offense occurred;

(b) the sheriff or other law enforcement officials in the county or counties, if known, in which a victim or the victims of the offense reside at the time of the escape or release;

(c) the sheriff or other law enforcement officials in the county, if known, in which the person intends to reside upon leaving confinement;

(d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital, mental health facility, or other institution from which the person escaped or was released is located; and

(e) a court that has requested that it be notified in the event of a release or an escape of the person."

{ Internal References to 44-2-601: None. }

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Section 2. Section 46-18-401, MCA, is amended to read:

"46-18-401. Consecutive sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term may not be merged in the other term; and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation may not be merged in any new sentence of commitment or probation.

(2) The court, whether or not it merges the sentences, shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite any sentence that is merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses must run consecutively unless the court otherwise orders.

~~(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program, the new sentence runs consecutively with the remainder of the original sentence. The~~

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~~prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."~~

{xInternal References to 46-18-401:
46-23-217 46-23-217 46-23-426}

Section 3. Section 46-18-402, MCA, is amended to read:

"46-18-402. Credit for time served. ~~Where~~ If a defendant has served any portion of ~~his~~ the defendant's sentence under a commitment based upon a judgment ~~which~~ that is subsequently declared invalid or ~~which~~ that is modified during the term of imprisonment, ~~such~~ the time ~~shall~~ served must be credited ~~upon~~ against any subsequent sentence ~~he may receive~~ received upon a new commitment for the same criminal act or acts. ~~In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit."~~

{Internal References to 46-18-402: None.}

Section 4. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through ~~(5)~~ (4), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison

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or the women's correctional center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least ~~one-half~~ one-fourth of the prisoner's full term, ~~less the good time allowance provided for in 53-30-105. Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the prisoner has served 17 1/2 years of the sentence.~~

~~(3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has served at least one-half of the full term, less the good time allowance provided for in 53-30-105.~~

~~(4) (3)~~ A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years, ~~less the good time allowance provided for in 53-30-105.~~

~~(5) (4)~~ A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

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~~(6) Whenever the department of corrections and human services certifies to the board that the population at either the male or female correctional facility has exceeded its designed capacity for 30 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) through (4).~~

~~(7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration, the provisions of subsection (6) do not apply."~~

{xInternal References to 46-23-201:
46-23-217}

Section 5. Section 46-23-202, MCA, is amended to read:

"46-23-202. Investigation of prisoner by board. (1) Within the 2 months prior to a prisoner's official parole eligibility date ~~or within the 2 months following the date a prisoner becomes eligible pursuant to 53-30-105(5)~~, the board shall consider all pertinent information regarding each prisoner, including the circumstances of the offense, the prisoner's previous social history and criminal record, the prisoner's conduct, employment, and attitude in prison, and the reports of any physical and mental examinations that have been made.

(2) Before ordering the parole of any prisoner, the board shall interview the prisoner."

{Internal References to 46-23-202: None.}

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Section 6. Section 46-23-216, MCA, is amended to read:

"46-23-216. Duration of parole. (1) A prisoner on parole ~~who has served one half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one quarter of his term or terms, less the good time allowance,~~ is considered released on parole until the expiration of the maximum term or terms for which ~~he~~ the prisoner was sentenced, less the good time allowance as provided for in 53-30-105.

(2) The period served on parole or conditional release ~~shall be deemed~~ must be considered service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner."

{xInternal References to 46-23-216:
46-23-210*}

Section 7. Section 46-23-216, MCA, is amended to read:

"46-23-216. Duration of parole. (1) A prisoner on parole ~~who has served one half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one quarter of his term or terms, less the good time allowance,~~ is considered released on parole until the expiration of the maximum term or terms for which ~~he~~ the prisoner was sentenced,

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~~less the good time allowance as provided for in 53-30-105.~~

(2) The period served on parole or conditional release ~~shall be deemed~~ must be considered service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner."

{xInternal References to 46-23-216:
46-23-210*}

Section 8. Section 46-23-217, MCA, is amended to read:

"46-23-217. Service of term for additional crime. A prisoner who commits a crime while imprisoned in the state prison or while released on parole or under the supervised release program and who is convicted and sentenced for the crime shall serve the sentence consecutively with the remainder of the original sentence ~~as provided in 46-18-401~~. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence ~~as provided in 46-18-401~~."

{xInternal References to 46-23-217:
46-23-210*}

Section 9. Section 46-23-426, MCA, is amended to read:

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"46-23-426. **Escape.** A person convicted of escape from a supervised release program is punishable as provided in 45-7-306-
~~A person convicted of such an escape and sentenced therefor shall~~
and must serve such the sentence for escape consecutively with
the remainder of the original sentence ~~as provided in 46-18-401.~~"
{ Internal References to 46-23-426: None. }

Section 10. Section 53-30-105, MCA, is amended to read:

"53-30-105. **Good time allowance.** (1) The department of corrections and human services ~~shall adopt rules providing for~~
~~the granting of~~ may grant a good time allowance for to inmates
~~employed in any prison work or activity and to implement~~
~~subsection (5)~~ housed at an adult correctional facility or a
supervised release program facility. The good time allowance
~~shall~~ may operate as a credit on the inmate's sentence as imposed
by the court, conditioned upon the inmate's good behavior and
compliance with the rules ~~made~~ adopted by the department ~~or the~~
~~warden.~~ The ~~rules adopted by the department under this subsection~~
may not grant good time allowance to exceed:

~~(a) 10 days per month for inmates assigned to maximum,~~
~~close, and medium I security classifications;~~

~~(b) 13 days per month for those classified as medium II and~~
~~minimum security classifications;~~

~~(c) 15 days per month for inmates after having been~~
~~assigned as medium II or minimum security for an uninterrupted~~
~~period of 1 year;~~

~~(d) 13 days per month for those inmates enrolled in school~~

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~~who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;~~

~~(e) 3 days per month for those inmates participating in self improvement activities designated by the department~~ one day for each day served at an adult correctional facility or a supervised release program facility.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department ~~or warden,~~ the inmate may be punished by the forfeiture of part or all good time allowances. ~~The warden of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.~~

(3) A person may not earn good time under this section while the person is on probation. A person may earn good time while on parole at the rate of ~~30 days per month~~ one day per day served on parole. If the department determines that a person has violated the conditions of parole, it may, in its discretion, deduct good time credit accumulated under this subsection in an amount up to and including all credit accumulated on the date of the violation.

(4) ~~The warden of the state prison~~ department may request that restore all or portions of any previously forfeited good time ~~be restored~~ as a result of subsequent good behavior. ~~Any restoration of good time allowance must be approved by the department.~~

(5) If the population at the Montana state prison or the

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Montana women's correctional center exceeds the design capacity of the institution, the department may grant an inmate additional good time credits in an amount necessary to permit the inmate to become eligible for parole or to discharge the inmate's sentence. Good time credits for the discharge of a sentence may not exceed 180 days. The award of good time under this subsection must generally be provided to inmates who are nearest to parole eligibility or discharge."

{xInternal References to 53-30-105:
46-23-201 46-18-402 46-23-201 53-30-132
53-30-132}

53-30-132

Section 11. Section 53-30-102, MCA, is amended to read:

"53-30-102. ~~Qualifications of warden of state prison and warden of women's correctional center.~~ The warden of the state prison and the warden of the women's correctional center shall be persons trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution."

?

{Internal References to 53-30-102: None.}

NEW SECTION. Section 12. Repealer. (1) Section 46-18-404, MCA, is repealed.

(2) Section 53-30-105, MCA, is repealed. effective 1/21/97

{xInternal References to 46-18-404:
44-2-601 44-2-601 46-23-201
xInternal References to 53-30-105:
46-23-201 46-18-402 46-23-201 53-30-132
53-30-132}

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NEW SECTION. **Section 13. {standard} Effective dates. (1)**

[Sections 1, 2, 4, 6, 8 through 11, subsection (1) of section 12, and this section] are effective on passage and approval.

(2) [Sections 3, 5, and 7, and subsection (2) of section 12] are effective January 31, 1997.

-END-

{ Drafter (or reviewer of draft submitted
to Legislative Council)
John MacMaster
Staff Attorney
Montana Legislative Council
(406) 444-3064 }

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Printed 12:11 pm on December 30, 1994

LC0984

**** Bill No. ***

Introduced By *****

By Request of the Department of Corrections and Human Services

A Bill for an Act entitled: "An Act creating a commission on sentencing to study sentencing practices and guidelines and the effects of sentences; providing for the submission of proposed sentencing guidelines to the legislature by the commission; providing for recommendations to the legislature; and providing a termination date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Commission on sentencing.** (1)

There is a commission on sentencing. The commission is allocated to the department of corrections and human services for administrative purposes only, as provided in 2-15-121.

(2) The commission consists of:

(a) two members of the house of representatives, selected by the speaker of the house of representatives, no more than one of whom may be from the same political party;

(b) two members of the senate, selected by the president of the senate, no more than one of whom may be from the same political party;

(c) two district court judges selected by the chief justice of Montana supreme court;

(d) the director or designee of the director of the department of corrections and human services; and

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(e) the following persons appointed by the governor:

- (i) a county attorney;
- (ii) a criminal defense attorney;
- (iii) a probation and parole officer;
- (iv) a county sheriff;
- (v) a chief of police;
- (vi) a member of the board of pardons;
- (vii) an employee of the department of justice; and
- (viii) two members of the public, one of whom must be a victim of a crime for which a sentence of death or of imprisonment for more than a year was imposed.

(3) The commission shall select a chairman from its members.

(4) The commission shall meet at least quarterly.

NEW SECTION. **Section 2. Duties.** The commission may:

(1) collect and study data, studies, and research from public and private entities concerning sentencing processes and guidelines;

(2) publish or distribute material concerning sentencing processes, sentencing guidelines, sentences imposed, and the effect of those sentences;

(3) make recommendations to the 56th legislature concerning modification or enactment of sentencing and correctional statutes that the commission believes are necessary or advisable to carry out an effective, humane, and rational sentencing policy;

(4) make a recommendation to the 55th legislature as to whether the commission should be continued in existence;

make
recomm
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sent.

(5) identify the impact of good time credits and sentencing guidelines on the criminal justice system; and

(6) make a recommendation to the 56th legislature concerning the advisability of good time credits.

NEW SECTION. Section 3. Sentencing guidelines. (1) The commission shall determine the advisability of proposing advisory sentencing guidelines to the 56th legislature. *to be more specific*

(2) If submitted to the legislature for its consideration, the guidelines must ~~specify~~ *be advisory to the district courts, and must specify,*

✓ (a) the range of sentences applicable to each crime;

✓ (b) a range of sentences for a defendant previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon;

✓ (c) variations from the range of applicable sentences on account of aggravating or mitigating circumstances;

✓ (d) the circumstances under which imprisonment of an offender is proper;

✓ (e) a presumptive sentence for offenders for whom imprisonment is proper, based upon an appropriate evaluation of the crime committed, the prospects of rehabilitation of the offender, the circumstances under which the crime was committed, and the criminal history of the offender; and

✓ (f) appropriate sanctions for an offender for whom imprisonment is not proper.

(2) In establishing the sentencing guidelines, the primary consideration of the commission must be public safety and the

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restoration of the victim. The commission shall also consider the prospects of rehabilitation, responsibility, and accountability of the offender; current sentencing and release practices; and correctional resources.

NEW SECTION. Section 1. {standard} Termination. [This act] terminates October 1, 1997.

-END-

{ Drafter (or reviewer of draft submitted
to Legislative Council)

John MacMaster

Staff Attorney

Montana Legislative Council

(406) 444-3064 }

Other changes by John

IMMEDIATE EFFECTIVE DATE

Terminates 5/30/97

MINUTES

Joint Council

MINUTES

GOVERNOR'S ADVISORY COUNCIL ON CORRECTIONS AND CRIMINAL JUSTICE POLICY

Wednesday, May 18, 1994

The first meeting of the Governor's Advisory Council on Corrections and Criminal Justice Policy was called to order at 9:00 a.m., May 18, 1994, in the Governor's Reception Room in the Capitol Building, Helena, Montana.

Present were: **Governor Marc Racicot; Members: Judge James Nelson, Judge Ted Lympus, Judge Jeffrey Sherlock, John Connor, Jr., Mike Salvagni, Linda Hickman, Lt. Jim Cashell, John Strandell, Candyce Neubauer, Dana Donahue, Bud Walsh, Steve McArthur, Mike Lavin, Bill Smith, Earl Peace, Bill LaBrie, Frank DiFonzo; and DCHS staff: Rick Day, Mickey Gamble, Jan Bouchee, Julie Buchman and Lindy Proue.**

I. INTRODUCTION AND COMMENTS BY GOVERNOR RACICOT

The Governor thanked the Council for agreeing to serve in this capacity. He stressed the goal of the Council is to put together final touches on legislative initiatives to present to the Legislature and to develop policy for presentation to the Legislature in 1995.

II. STATUS OF CORRECTIONS IN MONTANA - Rick Day & Mick Gamble

Rick Day gave an broad overview of what the Department of Corrections and Human Services consists of: corrections, mental health, developmentally disabled and veteran services and chemical dependency services. The Department incorporates approximately 1800-1900 FTE and has a '94-'95 General Budget of \$153 million.

The Department's vision and mission and the Correction Division's mission were presented to the Council. The general message is we have to earn respect and trust to implement vision.

The crime rate for the State of Montana was discussed. On a national level, Montana ranks 33rd for its crime rate. Montana ranks eleventh among the thirteen western states for its crime rate, with the violent crime rate in Montana being the lowest. Montana ranks twelfth in the Western Region for its incarceration rate.

The '93 regular session granted the Department a correctional population of 850 with added budget flexibility. This flexibility would be exercised by diverting admissions to the prison by utilizing our community corrections and good time. It was stressed that at no time has the prison been restricted from accepting those the courts and probation and parole officers have deemed appropriate for prison admission.

The current population at the prison is approximately 1200 and probation and parole has increased by 1100. It is interesting to note property crimes account for 30% of the population while violent and sex crimes admissions increased and drug crimes decreased. The majority of work is being done in probation and parole. We have obtained a balance in total population. Projections for correctional population include Montana State Prison, pre-release and intensive supervision.

The Women's Correctional Center will be able to accommodate the 95-97 population due to the new site in Billings.

John Connor questioned how the Prison was accommodating 1200 when the Legislature budgeted for only 850. **Rick** explained that the Department experienced substantial savings in medical costs and other areas. **Governor Racicot** explained that the Legislature gave the Department flexibility in moving funds at the Prison. **Rick** commented that community levels are up as well as prison, however he feels we can still bring in FY95 within budget.

Mike Salvagni questioned statistics. Technical violations are up. Some alternatives/changes will be commitments to the Department. Therefore, the judge is not involved in the revocation process.

Another change is the Boot Camp. Out of 32 graduates, only four have returned to MSP and those returns have been for DUI or theft.

Special Good Time is another alternative and very controversial. We are still working on procedures and communication.

Threepeat initiated much discussion. Threepeat would add 170 inmates per year and would fill our prison within five years. The Women's Correctional Center would be filled within five years. The taxpayers would not want to build new prisons every five years. These statistics were arrived at by polling threepeat offenders. It was mentioned that threepeat would need to be used with discretion and could restrict parole. It was noted offenders may come to Montana from surrounding states to escape threepeat offenses if it wasn't implemented.

Pre-Release was discussed. We are at capacity, but as of June, 1994, all pre-release centers will be private, not state-operated. Success rate after three years: 90% don't return.

The topic of sex offenders was briefly discussed as a speaker was coming in the afternoon to address this issue. Average length of stay has increased to 35 months and this offense incorporates the highest population.

Mickey Gamble took the floor and addressed the Committee. The public is concerned about safety and security, yet the public will not be receptive to building more prisons. We need to hold offender and staff responsible and manage all programs in a cost effective manner. Systems cannot be developed in isolation, so the programs are being opened up to the staff. More people are being moved to the community risk management.

Plans are being made to expand the Boot Camp to 56 and this will also include a women's component. In the future we hope to have 370 in a pre-release program and will have a non-residential component (day reporting) for 90 males and 44 females.

Other components are Intensive Supervision Program (ISP) and Regional Jails. The basis of these programs will be community programs (probation and parole). Community is a major component.

In the past, Montana State Prison was overcrowded and disrespectful; it is still large, but now it is safer. This has been accomplished by unit management and redoing treatment components. The prison hierarchy has been reduced by six people. We have worked for the past 11 months with the unions and have now become a team. The environment at the Prison is safe. Construction projects at the prison, such as pulling the towers and improving the fencing, will enable it to maintain at the current level. The cost for these projects will be around \$500,000.

A new laundry is being built at a cost of \$2.9 million which will include Montana State Prison (MSP), Montana State Hospital (MSH), Montana Chemical Dependency Center (MCDC) and Montana Developmental Center (MDC).

Profits from the Prison Industry and Ranch program will be used to build an honor dorm to be completed by 1996. The honor dorm will house those currently in the dairy dorm and will house approximately 80 inmates.

III. LEGISLATIVE PROPOSALS - CONCEPT DISCUSSION

A. Good Time

- Need sentencing guidelines and truth in sentencing.
- Look at good time and address as bad time.
- Good time is calculated at time of entering program.
- Could lose good time as term is done.
- If good behavior, have an inmate serve a percentage of time to become eligible for parole.
- If bad behavior, parole eligibility date is delayed.
- If bad behavior, add time on to current sentence time.

B. Sex Offenders

- Life commitment is not all served in prison, means lifetime supervision.
- Eliminate discharging without a supervised release.
- Increase sunset sanctions for threepeat and stalking offenders.

C. Regional Prison Authorization

- Allow DCHS to join with counties in including state beds at the county jails.
- Will have to make statutory changes.
- Bonds will pay for local beds and state for state beds.
- Educational programs could be accessed by computer.

- Will there be arguments as to availability of similar resources?
- Sites are being selected based on demand.
- Standards between county and state shouldn't vary and should reflect Department's mission and vision.
- Same management tools will be used as at MSP.
- Inmates will not be intermingled (presentence, county and state).
- As inmate moves through system, there should be continuity.
- How would industry programs be involved in regional jails.

D. Mental Health - Sex Offender

- Has not been consistent sentencing and clients have been scattered around all institutions.

E. Victims Rights Enhancements

- Chemical dependency
- Aftercare

BREAK FOR LUNCH

IV. SEXUAL OFFENDER PROGRAM - Sandy Heaton

Sandy distributed a handout--MONTANA SEX OFFENDER TREATMENT ASSOCIATION, which described the adult and adolescent sex offender evaluation standards. She also handed out SEX OFFENDER PROGRAM information.

Sandy has had 20 years experience working with the state, 15 of which she has worked directly with sex offenders. In 1975, she began the first group at MSP, which consisted of seven rapists and one child abuser. Sandy has also worked with sex offenders in the community one day/week for the last two years.

Sandy explained how the sex offender program operates. The main point she wanted to get across is that sex offender treatment works for the majority of offenders. There will probably always be reoffenders, but the majority do not reoffend if they are given support within the community. The problem is many people in the community are afraid of sex offenders. The risk of reoffending is not as great as the public believes. But there are different levels of risk. Stress raises the risk. That's why it is so important that sex offenders are given support within the community upon release from MSP. And sex offenders are not released from MSP until the risk level is low. Sandy believes they can be managed safely in the community. Sandy supports life-time supervision of sex offenders.

Sandy then held a question and answer period regarding the sex offender program.

V. FEDERAL CRIME BILL UPDATE - Judy Browning

Judy gave a quick outline of the Federal Crime Bill. She has not received the actual crime bill to date--just a 153-page summary and a ten-page summary of the summary. If anyone would like a copy of one of these summaries, feel free to contact Judy.

The Senate bill passed in November of 1993 and has funding of \$22 billion for five years. The House bill is expected to pass within a few weeks and has funding of \$28 billion for five years.

Most of the dollars are to increase the number and size of prisons, more police officers, and punishment programs. \$14 billion is allocated to prisons. There are stiff repeat offender bills. For a state to qualify for funding, it must have truth in sentencing (serve 85% of sentence). There are various other restrictions. Since this federal bill passed, thirty states have introduced legislation for the 'three strikes, you're out' sentencing.

Some other issues addressed in the bills are drug prevention and drug rehab programs, domestic violence, assault weapons, rape prevention, urban area drug and violence prevention, rural crime prevention, and prohibiting illegal aliens.

The problem: the federal crime bill is too big to deal with, and there are no dollars. It has difficult standards for Montana to deal with. More states are picking punishment before prevention in response to federal legislation. The federal government and the state are going in the opposite direction. The White House has placed priority on funding the Brady Bill, border control (illegal aliens), and increasing the number of police officers.

The **Governor** then gave a thumbnail sketch of his meeting on the Crime Bill in January. There is no funding yet, and so many things are left unclear. The 'train is on the tracks--it will be difficult to stop'. **Judge Lympus** concluded 'there is no train headed to Montana. It's best for this council to assume no money is coming to Montana.' The **Governor** added that the public doesn't feel safe and is pressing for something to be done quickly. There is a need for meaningful discussions to be constructive. The Governor suggested contacting your national associations, senators and representatives. This is a significant issue, they are giving lots of time and attention to it. There is also a lot of misunderstanding. It is a problem when complex issues are reduced to simple solutions (i.e. three strikes, you're out). The Governor commented that Montana is on the cutting edge of addressing many of these issues. Many of the federal statutes mirror ours.

VI. GENERAL BUSINESS

- A. **Election of Chairman:** Mr. Lavin nominated **Judge Sherlock** to serve as chairman of the council. **Judge Lympus** seconded the motion. The motion passed unanimously, and **Rick Day** confirmed **Judge Sherlock** as chairman. **Rick** then turned the proceedings over to **Judge Sherlock**.

2. **Election of Vice Chairman:** Mr. Lavin nominated Mike Salvagni as Vice Chairman. Judge Lympus seconded the motion and Mr. Connor moved to close nominations. The motion passed unanimously, and Judge Sherlock confirmed Mike Salvagni as Vice Chairman.
3. **National Conference of State Legislators - National Congress on Crime:** Rick Day gave a brief summary on the conference and asked for volunteers to attend. Mike Lavin agreed to attend the conference June 10-11, 1994.
4. **Subcommittee Assignments.** The following subcommittees were formed:

Regional Jail Subcommittee

John Strandell, Chairman
Lt. Jim Cashell
Chief Frank DiFonzo
Bud Walsh

Truth In Sentencing Subcommittee

Honorable Ted Lympus, Chairman
Lt. Jim Cashell
John Connor, Jr.
Dana Donahue
Linda Hickman
Honorable James Nelson
Candyce Neubauer

Sex Offender Subcommittee

Mike Salvagni, Chairman
Chief Bill LaBrie
Mike Lavin
Steve McArthur
Earl Peace
Bill Smith
John Strandell
Bud Walsh

5. **Next Meeting** - The next general meeting of the Council will be August 17, 1994, at the Montana State Prison in Deer Lodge beginning at 9:00 a.m. If a member of the Council cannot make this meeting, please contact **Chairman Jeffrey Sherlock**. Each committee will be asked to address the Council with its progress.

These minutes were approved by Chairman Jeffrey Sherlock on June 22, 1994.

Respectfully Submitted:

JULIE BUCHMAN

LINDY PROUE

MINUTES

GOVERNOR'S ADVISORY COUNCIL ON CORRECTIONS AND CRIMINAL JUSTICE POLICY

Wednesday, August 17, 1994

The second general meeting of the Governor's Advisory Council on Corrections and Criminal Justice Policy was called to order by Judge Jeffrey Sherlock at 9:15 a.m., on August 17, 1994, in the Religious Activity Center at the Montana State Prison (MSP).

Present were Members: **Honorable Jeffrey M. Sherlock, Frank DiFonzo, Bud Walsh, John Strandell, Mike Lavin, Steve McArthur, Mike Salvagni, Bill LaBrie, Earl Peace, Jim Cashell, Candyce Neubauer, John Connor, Linda Hickman, Honorable James C. Nelson and Dana Donahue.** **Honorable Ted O. Lympus and Bill Smith** were not present.

Invocation was given by Reverend Wohlers.

I. Welcome and Introductions
- Judge Jeffrey Sherlock, Chairperson

Judge Sherlock reviewed the agenda and then had everyone introduce themselves.

II. Corrections Update
- Rick Day, Director, Department of Corrections and Human Services

Handout - Corrections Division Population Report, August 16, 1994

The population distribution throughout the field has a net result total increase from 1992 to 1994 of a 1500 person increase. The bulk of population is in the probation and parole area with a dramatic increase in pre-release, but the prison is still overpopulated.

Projected population by 1999 - 2100 (correctional population which includes all programs).

Handout - Letter to Judge Nelson re: persistent felony offenders

III. Reports

A. Regional Jail Subcommittee - John Strandell, Chairperson

Handout - Regional Jail Committee Report presented to the Governor's Advisory Council on Crime and Criminal Justice Policy

The Regional Jail concept was originally introduced by Rick Day in 1991 to bring the State of Montana and counties together to work cooperatively. Regional jails would include a regional prison pod which would house state inmates (medium or closed custody status).

The advantages are:

- The State would gain hard cell capacity without adding to prison population;
- DCHS has already budgeted for three regional jails around the State;
- Staff members would be hired by county and be county employees;
- One site instead of two different sites and projects;
- Pods would be set up geographically throughout the state and would save in transportation and staffing costs;
- With state and county working together, the revenues are pooled together and allows the county the necessary operating capital to operate facility;
- County can utilize medical plans with state involved;
- More programming can be successfully implemented using state resources;
- Sentenced inmates would be near home and this reduces reoffend status;
- State involvement will offset cost of operating these facilities; and,
- Federal government is in need of space for federal inmates which will also offset operating costs.

The problems are:

- Gaining approval from 1995 Legislature;
- Lack of trust by local governments in State of Montana;
- Lack of State funds to implement concept;
- Reaction of local citizens having pods in their community; and,
- Impact on social services.

Subcommittee recommended this concept be presented to 1995 Legislature.

Judge Sherlock asked what kind of inmates would be in the Regional Jails and **Mickey Gamble** indicated it would be local inmates, prison inmates, and parole revocations. Mickey indicated the need to get a technical assistance grant from NIC to coordinate this plan. There will be different standards for regional jails and state pods will be separated from county inmates.

Determination of regional jail locations will depend on funding. We first want to identify at least three locations - those that have a bond issue on the ballot for approval in November. Hopefully, Legislature will base locations on geographical location.

Counties could incorporate more than one county depending on area (Glendive, if approved, would incorporate six counties).

The Regional Jails are economical for sheriff and county officials. There has been interest in those that are already looking at building a jail.

Jail standards have been revised and adopted by the Montana Association of Counties. Commissioners will see regional jails are cost effective. Smaller counties need to come up with 72-hour holding facility (new requirement). Transportation could be more cost effective. Possibly do hearings through telecommunications.

Mick Gamble would prefer placement to the Department which would decide where to put them. Judge could still determine whether they wanted them sentenced to the Prison or to the Department.

Frank DiFonzo asked if there is a guarantee that the pod would be kept full. **Mick Gamble** indicated there would be a commitment guaranteeing a monthly rate and number of inmates even if population falls below guaranteed rate.

All programs will be available to county, state and federal inmates in the regional jail.

Rick Day stated that the Department is guaranteeing Cascade County at least 76 beds a month. All inmates would be classified as MSP inmates.

Judge Sherlock asked if this council would be voting on the concept or a particular location. **Rick Day** indicated that we would be voting on the concept.

Based on the Council's recommendation, the Department of Corrections and Human Services will draft legislation.

It was mentioned that we have a unique program with Gallatin County wherein they will run the pre-release program out of the county jail.

B. Sex Offender Subcommittee
- Mike Salvagni, Chairperson

Handout - Report to Governor's Advisory Council on Corrections and Criminal Justice Policy

This Subcommittee was formed to look at two specific proposals. The Subcommittee's function was to look at these issues conceptually with no legislative proposals as to how they should be implemented.

The next step was to contact other states. Mike Salvagni has been in contact with an attorney in New York and Montana's State Crime Lab regarding DNA registration and has met with the Department's Task Force on Lifetime Supervision regarding DNA registration.

The Subcommittee's meeting notice of July 20th was sent to all judges, county attorneys, sheriffs and chiefs of police. This meeting concerned the crime package for the 1995 Legislature which proposed legislation on lifetime supervision and DNA registration. Sandy Heaton advocated lifetime supervision for sex offenders and Andy Hudak, President of the Montana Sex Offender Treatment Association, was present and also supports lifetime supervision. Mike Ferriter, Bureau Chief of Probation & Parole, advised impact would be minimal regarding lifetime supervision.

Twenty-six (26) states have DNA registration. Information from the State Crime Lab was not available at July 20 meeting. Comments were received from seven individuals in support of lifetime supervision or registration. After reviewing information from Sandy Heaton and Andy Hudak, the Subcommittee believe lifetime supervision is an essential treatment component. The Subcommittee recommends lifetime supervision, and to seek funding for treatment after prison. The offender should pay back treatment. The Subcommittee did not resolve whether lifetime supervision should be mandatory or discretionary for first time offense. Second offense should be mandatory. The State of Arizona has lifetime supervision. The Subcommittee endorses lifetime registration. Should have at least lifetime registration if not lifetime supervision. Chief Oberhoffer asked for statewide registration so we can follow offender from city to city.

DNA registration - every person convicted of a sex offense would undergo DNA analysis. If another sex crime is committed, you could match from DNA on file. DNA is not 100% absolute proof. In regards to evidentiary matters, it is circumstantial, but is a deterrent to sex offenders. If any concepts are approved by Council, they would like the Department to come forward with legislation.

There are two different kinds of DNA registration. RFLP method is most reliable method and most expensive (cost for three samples was \$3,000). The less expensive test is not much better than blood type. A budget needs to be proposed

if these concepts are passed. It would be good to have Mark Murphy come to a meeting and describe these methods.

Mike Salvagni indicated that the Subcommittee adjourned their last meeting with the idea that Jim Streeter and Julie Long from the Montana Crime Lab would address the Subcommittee and provide information that would answer many questions.

Judge Nelson asked who would have access to the DNA registration and was advised that the registration was more for investigative purposes.

Earl Peace asked for a definition of a sex offender, and the difference between violent rapist and exposure. Should they be in same category? Earl stated the need to face issue on who this would and would not affect.

The Subcommittee stated it is impossible to write a description to fit all situations and judges should be able to discern.

Costs always exceed estimate - lifetime supervision could become a great burden. There are 400 sex offenders at prison now. If 100 sex offenders are released every year for lifetime supervision, sooner or later it adds up.

What about sex offender registration? Who has access to register? Only law enforcement has access to registration. Probation & Parole does maintain record of a sex offender's movements from city to city.

It was suggested that with lifetime supervision to the Department, if a re-offense occurs, the offender should go back to prison. Could have sentencing option to Department for life for itemized sex offense and no suspension is granted. If offender doesn't comply with supervision in community, they go back to prison. Andy Hudak recommended the subcommittee look at redefining offenses.

Mickey Gamble stated of the 405 persons classified as "sex offenders" at the MSP, 317 are first time offenders.

The question was asked, "Can a sex offender be rehabilitated?" Sex offenders cannot be rehabilitated but can be controlled. Therefore, there is a need for lifetime supervision. **Rick Day** stated registration without supervision would not be successful. Who is going to take care of registration and making sure supervision is being accomplished. Sex offender has to have support and treatment in order to be in community.

Judge Sherlock - Can we make sex offense information public? Public notification may regress treatment or recovery. Law enforcement needs to be advised. Discussion was held on the public being advised of a sex offender being in the community and lifetime supervision.

C. Truth in Sentencing Subcommittee
- Judge Ted Lympus, Chairperson

Judge Lympus was not present; John Connor made presentation.

Handout - Memorandum dated July 19, 1994, regarding Draft Statute Changes and Memorandum dated July 19, 1994, regarding Good Time Proposal

Would be best served to work with the Department in terms of trying to address Good Time procedures. The Prison is concerned with how to expedite information to keep records current.

Judge Sherlock asked why there is good time. Isn't that why truth in sentencing is so good? Mickey Gamble replied that good time has become statutory. There is a need to come up with something that is acceptable to people where good time has already been implemented in the sentence and administration. Institutions don't have control of parole, but they do of good time.

The formula used in guestimating good time has become very confusing. Only Janet Cox at MSP completely understands it. What will be the most effective on the street?

Good Time Proposal will be cleaning up good time. There will be two classifications of good time - Special Good Time and Administrative Good Time.

Handout - Illinois Study Shows Shorter Prison Terms Save Taxpayers \$100 Million a Year Without Jeopardizing Public Safety Rick Day endorsed this concept.

Rick Day shared statistics regarding Special Good Time in the State of Montana. Regarding discharge - 95 were recommended and 77 were released; parole - 59 recommended, 16 paroled, only 1 returned. Cost savings of \$270,000 with paroling 16, cost savings of \$321,000 with discharging 77, total cost savings of \$600,000 (based on per day costs).

Dave Ohler discussed MCA 46-18-401 (5) - If you are sentenced to an offense, then reoffend while in prison or on parole, the second sentence must run consecutive to first. If paroled, first sentence as well as second sentence run concurrently. Dave suggests we eliminate this sub-paragraph and therefore will leave matter of consecutive and concurrent to the judges.

Should we possibly do away with good time all together? It is not understandable. There needs to be something in the prison to award good behavior, but why do we have both parole and good time? Can't do away with good time as we still have to honor those persons committed prior to change in good time statute.

D. National Congress on Crime
- Mike Lavin

Handout - National Congress on Crime Participants Roster and Agenda

Mike Lavin and Senator Chris Christiaens attended the National Congress on Crime June 10 and 11, 1994, in New York.

In New York, mandatory sentencing isn't working.

Work release program doesn't work in New York.

Mandatory sentencing provides for public safety.

Mandatory sentencing produced expansion of prisons.

Mandatory arrests and sentencing are important.

Prisons are full of prisoners who really don't belong there.

New Hampshire has a truth in sentencing policy and has restored faith in sentencing.

Discussed youngsters carrying guns to school.

Prevention and early intervention is superb - intake, diagnostic and intake phase.

Discussed racial justice and assault weapons.

IV. Role of Inmate Council

Introductions by Mick Gamble. Tom Hernandez is the Chairman of the Inmate Advisory Group.

Handout - Montana State Correctional System Inmate Advisory Council Mission Document

Advisory Council has been in effect for six months, and was formed through Mickey and inmates. Members are appointed by Mick Gamble. Council was formed to advise Mick and Department as to what the inmate concerns and needs are. The Council has developed a mission statement. They believe there is a need to address negative attitudes from the public. Philosophy - Mickey is using persons in all correctional institutions to advise - getting it straight from the source. This has helped establish a level of trust. Generally want to be a sounding board between inmates and administration.

Three committees have been formed to reach goals.

- Finance Committee - researching grants available, utilize welfare.
- Communications and Public Relations Committee - open lines of communication with all levels from inmates to administration. Need to get positive issues to the public.
- Programs, Recreational and Training Committee

Vision statement - To impact the system and the potential for human change and growth by proactively developing integrity and recognition as a council.

There are inmates in prison who should not be allowed back in the community, but this does not apply to the majority of the population. The majority made a mistake and need help to utilize skills and education. The Council wants to be recognized by actions they do. They are here as advisors to the public - what they go through, what they feel. The Council does not represent population as a whole, but each person as they are here today.

John Connor asked if life at MSP was better than three years ago. **Tom Hernandez** advised that the atmosphere is far better. Unit management will be a concept that will dominate this institution. Conditions and environment have improved. **Gary Raby** stated that conditions on the High Side have not improved - no jobs, no training.

What can be done administratively to improve high side conditions? Problem is not with administration. Situation gets addressed, but not the problem. One of the top three priorities is to change image of inmate. Image is negative. Changes have not been seen. Need to change focus from failure to success.

The Council has been trying to change what the media tells the public about what is going on, but the media puts more emphasis on the negative. The Council has invited the public to witness inmate facility plans, and will continue to invite the media. However, the Media tends to report the failures but not the successes.

How is the Inmate Council received in the population? The Council is between a rock and hard spot. Administration is suspicious and population is suspicious. The Council is in a tenuous position with population - going against the flow. The Council is trying to establish and improve a line of communication between staff members and inmates. The women's system has much more interaction than the men's system.

Judge Sherlock asked if they still have a program where first time offenders can come and see the prison. **Forrest Winkler** advised that the Council wants to set up a program, but they need to not only come and see, they need to come and participate. The Council is available to counsel a troubled youth; it is not a scared-straight program, but comprehensive.

Crowding and adequate funding for programming are ongoing issues.

The Inmate Advisory Council stayed for lunch with the Governor's Advisory Council.

V. Restorative Justice
- Earl Peace

Handout - "Convicted" by Charles Colson and Daniel VanNess

Program developed by Justice Fellowship and Charles Colson.

Going to prison is easiest form of punishment for some offenders. Our system is locked into punishment, which is prison, but prison is not corrections. There are better ways to inspire or punish.

All comments deal with non-dangerous offenders. 50% of population at MSP are classified as non-dangerous offenders. For every 100 crimes committed, one person goes to prison and one goes to jail. Offenders are laughing at the system and the victims are crying about the system. Criminals, not society, are the cause of crime. Unemployment is not a reason for committing crimes.

Question is what kind of person will an ex-inmate be when released from prison. Have to separate corrections from punishment. Need to view crime as an offense against individuals and not against state. Good system needs to involve government, offenders, victims and community. Prison does very little for victim; therefore the victim does very little for system. If the system did more for the victim, the victim would do more for the system.

Potential program activity

Work

Restitution

Community Service

Community Corrections

Intensive Supervision and House Arrest

Restorative Justice could come through an intensive supervision officer (ISP). ISP Officer should have a local community advisory committee to hold offenders accountable. This is a program to restore people, not punish. Jail may be used to catch their attention. Some people can be punished stronger by using their talents in the community, and not by putting them behind bars doing menial jobs. Could reduce total cost and keep offender in the community and productive. More pilot programs besides Gallatin County. Is not a jail based program; keeps them in the community, keeps them working and keeps them supervised.

There are only five victim witness associations in Montana. The Board of Justice and Crime Control are in the process of increasing victims rights. Full-time victim assistance program and money runs out in two years. Will propose an increase in misdemeanor to \$10 and will be used to assist victim assistance program.

Rates through reception will increase about 40%. Forty-five percent of admissions are property admissions; 50% are parole revocations.

There is a need to help people up front. We need to have something available at the county level - start treatment programs at county level and not parole level. Give the judges back their discretion. We have to allow corrections officials to do their job. Public relations need to accept the positive.

VI. Council Action on Proposals

Regional Jail Recommendation

Recommendation - Actively pursue this concept with the 1995 Legislature. Any county currently planning or in the stages of planning a new jail facility should be encouraged to plan with the State the inclusion of a regional prison pod within the County Detention Facility.

John Connor moved to adopt, John Strandell seconded, and motion passed.

Truth in Sentencing

Recommendation - Make statute changes outlined in Memorandum dated July 19, 1994, in addition to Dave Ohler's recommendation to MCA 46-18-401(5).

Judge Sherlock feels this is probably the first step in Truth in Sentencing, so when a sentence is given, it is the actual sentence (no hidden formulas for early release). Some form of study or review should be encouraged.

John Connor stated life sentences have a 30-year sentence built into them, and sometimes a non-dangerous offender serves more time than a dangerous offender.

After a lengthy discussion regarding Truth in Sentencing, it was determined the Department would draft modifications to statutes contained in letter of July 19, 1994, Dave Ohler's recommendation regarding MCA 46-18-401(5) and an indepth review. Issue of inmates gaining or losing time with change in good time needs to be discussed or studied. Put repeal date for good time off for a couple of years (October 1, 1997). There was general support as a concept, but not as a final proposal.

John Strandell motioned to adopt, John Connor seconded, and motion passed.

Sex Offender

Recommendation - Vote on all three concepts (lifetime supervision, lifetime registration and DNA registration), and draft first legislation. Frank DiFonzo stressed that legislation should read extended supervision and not lifetime supervision.

Frank DiFonzo made motion, Mike Lavin seconded, and motion passed.

Department will draft the legislation and present to the subcommittee.

VII. General Business

The next general meeting of the Council is slated for October 5, 1994 at 9:00 a.m. at Governor's Office in Helena. Jim Cashell will not be able to attend this meeting as he will be in Washington, D.C.

The next Sex Offender Subcommittee meeting is scheduled on September 28, 1994, at 9:00 a.m. in the Department of Corrections and Human Services Director's Conference Room.

Proposed legislation will be sent to all members prior to October 5 meeting.

The meeting adjourned at 2:55 p.m., and the Council then toured the Montana State Prison.

Minutes were approved by Honorable Jeffrey M. Sherlock, Chairman of the Governor's Advisory Council on Corrections and Criminal Justice Policy.

Respectfully submitted,

Julie Buchman
Julie Buchman jbp

MINUTES

GOVERNOR'S ADVISORY COUNCIL ON CORRECTIONS AND CRIMINAL JUSTICE POLICY

Wednesday, October 5, 1994

The third general meeting of the Governor's Advisory Council on Corrections and Criminal Justice Policy was called to order by Judge Jeffrey Sherlock at 9:15 a.m., on October 5, 1994, in Room 108 of the Capitol Building.

Members Present: Honorable Jeffrey Sherlock, Mike Lavin, Bill LaBrie, John Strandell, Honorable James Nelson, Bud Walsh, Steve McArthur, Earl Peace, Bill Smith, John Connor, Candyce Neubauer and Frank DiFonzo.

Members Absent: Honorable Ted O. Lympus, Dana Donahue, Linda Hickman and Lt. Jim Cashell.

Others Present: Ted Clack, Janet Cox, Craig Thomas, Rep. Liz Smith, Mary Lafond, Dave Ohler, Jane Hammond, Tom O'Connel, Cathy Kendall, Rick Day, Mickey Gamble, Jan Bouchee, Julie Buchman and Lindy Proue

I. Welcome and Introductions

- Judge Jeffrey Sherlock, Chairperson

II. Committee Reports

A. Regional Jail Subcommittee

- John Strandell, Chairperson

Handout: Technical Assistance Report "JOINT VENTURE CORRECTIONAL FACILITIES BETWEEN STATE OF MONTANA AND LOCAL JURISDICTIONS" by Kenneth V. Shulsen

John Strandell advised the Council that Mickey Gamble was able to obtain a grant from the National Institute of Corrections (NIC) for technical assistance in regards to the regional jail concept. The contact person from NIC is Ken Shulsen. The regional jail concept currently being incorporated in the State of Utah is a joint effort between local and state governments and consists of a prison pod associated with the jail. The earlier version was on a larger scale but has been downscaled.

Mickey Gamble felt we may want to contact NIC again to obtain a grant for an assessment of communities expressing interest in the regional jail concept. Mickey

also stated that eventually about half the incarcerated population could be housed in the regional jail pods. He recommended a steering committee be established consisting of members of the Council, Department of Corrections and Human Services, and various others to come up with guidelines for the regional jails. Dave Ohler offered to take care of any proposed legislation. Mickey stressed that the regional jail concept can be accomplished, and those who have already incorporated the regional jail concept are now expanding.

Rick Day recommended the Council stay active in this concept and reestablish a steering committee.

Fiscal impact from the regional jails will be none to initialize as this step is supported by grant funds from NIC. Counties expressing interest in the regional jails are Cascade, Yellowstone, Dawson, Missoula, Gallatin and Custer.

John Strandell suggested the Regional Jail Subcommittee be enlarged to accommodate the proposed steering committee. John Strandell stated that Architecture and Engineering was at the last Regional Jail Subcommittee meeting.

Justice Nelson expressed concern regarding how we plan on getting these issues passed if all recommendations would require some sort of budget impact - for example increasing jail space per the regional jail concept and increasing length of jail sentences. The papers are consistently stating that people are not going to approve any issues which call for an increase in taxes. Rick Day stated that all budget proposals being considered by the Council have already been included in the current executive budget.

None of what the Council is proposing in regards to Truth in Sentencing will currently increase the population at the Montana State Prison. The intent of Truth in Sentencing was to clean up the statutes. Justice Nelson asked how sentencing sex offenders to life wouldn't increase the prison population. Rick Day clarified that the sex offenders would be committed to the Department of Corrections and Human Services for life and the additional costs generated from this have already been included in the executive budget.

John Connor stated the Truth in Sentencing Subcommittee has not yet approached the issue of a prisoner serving a time sentence being eligible for parole consideration after serving 17½ years of his/her sentence. He felt Truth in Sentencing could not be voted on until more time had been spent with the issue. The Subcommittee needs to be clear on what is going to be presented to the Legislature.

Rick Day stated changes in good time would have a neutral affect on the population at MSP and WCC.

Jane Hammond of the Governor's Office offered the assistance of her office. She stated if we sent legislation to the Governor's Office, they can get the first draft done and then sent back to the Council for review.

B. Sex Offender Subcommittee
- Mike Salvagni, Chairperson

Mike Salvagni reasserted the Sex Offender Subcommittee's mission to implement tougher policies regarding sex offenders. The Council had asked the Subcommittee to pursue extended supervision, extended registration and DNA registration.

1. **Life Sentencing** In regards to life sentencing, the Subcommittee resolved to have lifetime commitments be an option for the sentencing judge.

The Subcommittee addressed making mandatory prison time for second offense child abusers, but it was stated that the sentencing judge already has that option under the persistent felony offender.

Persons sentenced to the Department of Corrections and Human Services for life will not be eligible for parole.

Frank DiFonzo questioned lifetime supervision when the offender is a youthful offender, and would he have a reprieve from this supervision. Mike Salvagni stated that would be discretionary with the Court.

Mickey Gamble stated that when an offender is sentenced to the Department of Corrections and Human Services, it is the Department's discretion on where to place the offender (prison, pre-release centers, intensive supervision, boot camp, etc.).

John Connor asked if there would be any fiscal impact on lifetime supervision. Rick Day stated that the impact of lifetime supervision has already been initially accommodated in the executive budget. Discussion was held on the budget impact regarding lifetime supervision. Rick Day stated that we do have an idea of the cost based on current conviction rates. Lifetime supervision is being applied to sex offenders due to sex offenses being a lifetime illness.

2. **Life Registration** The Subcommittee felt it should be a law to have all convicted sex offenders register for life. Currently, sex offenders are required to register for 10 years. The Department of Corrections and Human Services maintains the list, and it is accessible by the public.

Frank DiFonzo asked why lifetime registration didn't also address offenses such as murder and armed robbery. Judge Sherlock stated that lifetime registration of sex offenders is just a beginning. Mike Salvagni stated that the Subcommittee did not go beyond what was presently required.

Mike Salvagni shared with the Council the presentation Jim Oppedahl gave at the Sex Offender Subcommittee meeting on September 28, 1994. His presentation addressed incorporating Criminal Justice Information Network (CJIN) with the Department's list of registered sex offenders, which is possible. Information is available through CJIN, but needs to be obtained through human intervention, not through direct computer link.

Discussion was held regarding the community's right to be notified of a sex offender's address. The State of Washington's law regarding notification to the community is discretionary. The Subcommittee recommended the names of convicted sex offenders be made public, but not their address. It was felt legislation needs to be drafted addressing a victim's entitlement to information about the offender. Currently, the list of sex offenders is dependent on the sex offender providing the information. The Subcommittee recommended increasing the penalty for failing to register "to a term of imprisonment of not less than 90 days or more than 5 years and may be fined not more than \$5,000, or both [new wording underlined].

Discussion then went back to whether a sex offender's address should be public information or confidential. Judge Sherlock felt the neighbors should be advised of a probable danger. Mike Salvagni stated that this is what the Subcommittee was all about and what the Washington State law was all about. The list the Department of Corrections and Human Services maintains regarding sex offenders has not been publicly known but is considered public information. Washington State law provides for no liability to public officials. Frank DiFonzo raised the question of what do we do with what a neighborhood does after receiving notification of a sex offender in their neighborhood.

Justice Nelson asked if lifetime registration will also include flashers and Judge Sherlock stated it would depend on the case. Justice Nelson asked if discretion could be given to the court regarding lifetime registration for deviate sexual conduct.

Craig Thomas asked what was the reason for making offenders under lifetime supervision ineligible for parole. Mike Salvagni stated that the Department of Corrections and Human Services would have custody for life. Rick Day stated that if a person was in prison, he could parole, but not if there was a problem. Craig Thomas was wondering about the Board of Pardons' liability with lifetime supervision and Mike Salvagni didn't think it would change BOP's current liability. Mickey Gamble stated that the Board of Pardons is usually involved with decisions regarding Department commitments.

3. DNA Registration Mike Salvagni shared with the Council the presentation made by Jim Streeter and Julie Long from the Crime Lab at the September 28, 1994 Subcommittee meeting.

The Crime Lab has researched legislation in regards to DNA registration and the Lab felt New York State's legislation met our needs. Their legislation requires sex offenders to have DNA registered with the State Crime Lab. It will be several years before a DNA Registration List can be implemented.

Mike Salvagni advised the Council of the following facts regarding setting up a facility to maintain a DNA registration:

- 1) Would require two full-time employees;
- 2) A person convicted (not charged) will have samples on file;
- 3) The State Crime Lab is interested for investigative purposes;
- 4) The cost per year would be approximately \$100,000;
- 5) Would cost \$72,000 to make a room;
- 6) Would cost \$75,000 for equipment;
- 7) Would need a Ph.D. consultant (should be able to use same one at University);
- 8) Materials would cost \$50 per test; and,
- 9) Would take 1½ to 2 years to start.

The question was asked, "Would the Federal Crime Bill accommodate setting up the facility or do we need to have facility set up before we can obtain funds from the Crime Bill?"

Rick Day stated the Department does have information regarding budgetary impact of lifetime supervision and registration, but does not have information regarding DNA registration.

It was felt there should be an exception to DNA registration in regards to youthful offenders. Frank DiFonzo asked if setting up a lab to handle DNA testing would pose a problem. Mike Salvagni indicated that the Department of Justice would be in charge of those costs. Frank DiFonzo felt DNA registration was a very positive step and that we should pursue finding grant money. Mike Salvagni clarified that the type of DNA testing to be used would be PCR.

C. Truth in Sentencing Subcommittee - Judge Ted Lympus, Chairperson

Judge Lympus was not present; **John Connor** made presentation.

John Connor stated that members of the Subcommittee have met with Prison personnel so they could address good time. **Dave Ohler** has drafted legislation that addresses the good time issue.

Judge Sherlock asked if the Subcommittee was going beyond between dangerous and non-dangerous offenders. Is the Subcommittee addressing truth in sentencing

with their proposal of moving good time from 1/2 to 1/4? The Department of Corrections and Human Services is looking at truth in sentencing and good time administratively. The Subcommittee felt they needed to address sentencing being more truthful than it is right now.

Subcommittee is addressing the following:

- 1) flat 30 days for good time / month - (day for day);
- 2) have to serve at least 25% of sentence before being eligible for parole;
- 3) need guidelines to see what other changes need to be made.

John Connor asked what was drafted regarding good time and non-dangerous offenders. Dave Ohler stated that in his draft legislation it addressed:

- 1) eliminating the 17½ year rule;
- 2) eliminating good time on 30 years (have to serve 30 years first on life sentences);
- 3) eliminated early parole release.

Current life sentences only serve approximately 15 years. Parole eligibility for someone sentenced to life would be 30 years where currently it is 15 years. Proposed legislation will stipulate an offender would become parole eligible after serving 25% of his/her sentence.

Dangerous and non-dangerous would be eliminated and inmates would be required to serve 25%, which is what is currently served on the dangerous designation. Good time was day for day instead of up front. If an offender misbehaved in prison, his/her good time could be taken away.

Dave Ohler stated that his draft legislation also excluded the word "shall" - when it appears it creates a liberty interest for the inmate. The word "shall" will be replaced with "may" and this takes the Department out of litigation regarding good time. The Department will need to adopt rules to implement good time. Good time issues are discretionary with the Department. It was shared that the draft legislation should replace "Warden" with "Prison Administrator", but the Prison Administrator and Department Director are one in the same, so it was felt the legislation could show Department Director and his or her designee.

Justice Nelson asked why we needed good time at all. Rick Day stated that eliminating good time would put an additional 300 offenders into our population.

Ted Clack shared with the Council some data regarding good time. The average length of stay is 33 months with current good time laws. Paroled inmates (non-dangerous) are being discharged after serving 31% of their sentence. Paroled inmates (dangerous) are being discharged after serving 34% of their sentence.

Judge Sherlock shared his frustration as a sentencing judge. They just want the bottom line and be able to sentence someone without having to label and construe to get bottom line on what they will serve.

Mickey Gamble stated that good time has become an entitlement. Rick Day added that he didn't know if good time has any affect on behavior. Judge Sherlock shared that as a sentencing judge, he is more concerned with sending them to prison and not concerned about the prison population.

Comment was made regarding the federal government eliminating good time and going with truth in sentencing. Could truth in sentencing increase our population, and the Department felt the Subcommittee's proposal was population neutral.

The Department proposed establishing a Montana Commission on Sentencing. Mike Salvagni asked why the Department was trying to remedy the good time issues if they were proposing such a commission.

Two factors were reiterated:

- 1) flat good time (30 days on good time); and,
- 2) flat percent toward parole (25% for parole eligibility).

General consensus was that what the Council was doing needed to be clear to the public. Some members felt eliminating distinction between dangerous and non-dangerous offenders will only confuse the public. Justice Nelson admitted that determining between non-dangerous and dangerous stipulation is based on how long they want the actual sentence.

Discussion was had as to when and to whom to implement good time revisions. Do we want the system to apply to inmates already incarcerated? Justice Nelson asked if good time was taken away, could we implement it to already existing sentences and also future. Janet Cox stated that good time varies from 10 to 30 days per month. Designation of dangerous and non-dangerous has no effect on discharge dates. Those offenders currently in the system would not serve more time if there were a change in good time. New proposals help in calculating sentence time. It was stated that a Commission on Sentencing could propose a minimum and a maximum and therefore, the minimum would be an actual time served. Mickey Gamble stated that we need something to help manage the current system. John Connor asked if we should conduct a study regarding good time with current and future system. It was felt we should pursue the Montana Commission on Sentencing and pursue legislation.

Rick Day assured the Council that proposed statute changes will be presented to the Legislature upon the approval of the Council.

Craig Thomas stated the BOP supports 25% of time served before being parole eligible, the elimination of dangerous and non-dangerous, and the elimination of good time in regards to parole eligibility.

III. Proposed Victims' Rights Legislation

- Beth Baker

Beth Baker was not able to make presentation. Victim legislation is not in final form. They are trying to bring the victim of crime more into the process. Beth Baker will be making presentation to Board of Crime Control on Friday, October 7, 1994.

IV. Crime Bill Update

- Mickey Gamble

Handout - The Corrections Quiz: Factual Reports on Review of Crime Bill

There are two grants - Truth in Sentencing and Violent Offender.

Federal government can pay up to 75% of the costs of state proposals with the Truth in Sentencing Grant; this means the states must have a 25% match. Grants can be used for development of regional jails, but will not be available until FY96. The Crime Bill designates 50% to each program or \$4 billion per year. If Truth in Sentencing Grant funds are not used, they will revert to the Violent Offender Grant. The Crime Bill needs to define violent offender. The Crime Bill will have money available for technical assistance in late October or early November. \$24.5 million has been appropriated toward construction of boot camps. Administrative costs will run approximately 10 to 15%. Would have approximately 30 cents per inmate available from Crime Bill. Dan Russell, former DCHS Corrections Division Administrator, is working on a summary with NIC. The 'Three Strikes and You're Out' proposal would require building a new prison every three years. The State of Virginia recently passed eliminating parole.

LUNCH BREAK - 12:30
Resume at 1:30

V. Discussion Topic by Request of John McMaster, Legislative Council

- Request for Bill Draft by Sen. Halligan that Judges be required to explain the sentence. Rick Day requested the Council's opinion on legislation requiring Judges to explain the sentence. The opinion of the Council was that this requirement would create grounds for appeal of a sentence. This should not be a judge's responsibility. The victim should be made aware of the sentence as soon as possible, however, the judge should not have to explain sentence on the spot. Sentencing is complicated enough already.

VI. Action on the Proposed Legislation

How does Council want to report proposed legislation to Legislature? Rick Day suggested using a cover letter with proposals attached.

A. Regional Jails

John Strandell made a motion to adopt the recommendation in the Technical Assistance Report entitled "JOINT VENTURE CORRECTIONAL FACILITIES BETWEEN STATE OF MONTANA AND LOCAL JURISDICTIONS" with a change of wording in Section VIII. #2 to read as follows: "The state of Montana should develop ... a Regional/Cooperative Correctional Facilities assessment. As a minimum the assessment should ..." Motion was seconded.
MOTION PASSED.

B. Sex Offender

1) LIFE SENTENCING

Mike Salvagni made a motion that Council recommend to Governor amendments to 45-5-503, 45-5-625, 45-5-504, 45-5-502, and 45-5-507. Steve McArthur seconded.
MOTION PASSED.

Discussion was held: Justice Nelson felt 45-5-505 shouldn't be pursued. Should leave it as is and address in the future, if needed.

Mike Salvagni made a motion that no changes be made to 45-5-505 (Deviate sexual conduct) and 46-23-201 (Prisoners eligible for nonmedical parole). Steve McArthur seconded the motion.
MOTION PASSED.

2) LIFE REGISTRATION

Mike Salvagni made a motion to accept amendments to 46-23-502 (Definition of sexual offense), 46-23-506 (Duration of registration), 46-23-507 (Penalty), and the new section (Confidentiality of register). Motion was seconded.
MOTION DID NOT PASS.

Discussion was held regarding confidentiality of register (new section). Points discussed were:

- Names of offenders required to register are public now - although very few people know it is available.
- Who provides the information? Need specific guidelines on what can be released, who can have information, etc.
- The police should be able to tell who they feel have a right to know.

- Does this expose State and/or law enforcement agencies to liability? Washington has no liability written into their legislation. Mike Salvagni doesn't think we should always be concerned about being sued, or we'd never make any decisions. 'What is in best interests of community?' should be our main concern.
- Basically, is offender's right to privacy vs. public's right to know.

Justice Nelson explained his idea of the offender having a hearing up front to determine whether it was necessary to make public the offender's name and location. Mr. DiFonzo felt determination should be made upon release from prison--not each time offender moves into a new community. This should be a judicial decision, not a public agency decision. Could judge make this decision upon sentencing? Or would it be better to wait until release date?

46-23-506 (Duration of registration) was discussed. Justice Nelson would like to see a mechanism whereby register has opportunity to show why he shouldn't have to continue to register for life. Put burden on offender to show why he shouldn't have to continue to register.

Mike Salvagni made a motion for the Council to adopt recommendation of the Subcommittee to adopt amendments to 46-23-502 (Definitions), 46-23-506 (Duration of registration) and 46-23-507 (Penalty). Steve McArthur seconded. MOTION PASSED.

Mike Salvagni made a motion to request David Ohler and the Department of Corrections and Human Services to draft legislation to create a review process for registrants to have the requirement to register modified after ten years, and to draft legislation to create a procedure by which the Department could petition the district court to authorize the Department to release information about sex offenders to the community for public protection. Frank DiFonzo seconded. MOTION PASSED.

3) DNA TESTING

Mike Salvagni made a motion that the Council accept legislation for DNA testing subject to availability of funding. Steve McArthur seconded.

Mike Salvagni said that Cathy Kendall would have word back by November 1, 1994, regarding the cost of setting up DNA testing.

Department of Justice is requesting \$110,000 for DNA testing. There is an obvious need for that kind of legislation.

C. Truth-in-Sentencing

Rick Day filled in as acting Chairman in the absence of Judge Lympus.

1) Statutes Pertaining to Dangerous/Nondangerous Designation.

Rick explained this concept to simplify the sentencing procedures (MCA 46-23-201(2)). A flat rate (25%) would be used for parole consideration, and the 'dangerous/nondangerous' designation would be eliminated. Enact in October, 1995.

Rick also stated it would be best to delete MCA 46-23-201(6) regarding over-population notification to the Board of Pardons.

Discussion was held. Points discussed were:

- simpler
- this concept would not lengthen sentence
- the judge, victim, and prosecutor would know the earliest date that the offender could be released.
- may increase the prison population
- not a motivation for offenders
- can't impose additional obligation on current inmates' sentences--have to give them less or the same time -- not more.
- would need to have workshops for judges to explain new statutes

Justice Nelson made a motion to adopt the recommendations set forth on Statutes Pertaining to Dangerous/Nondangerous Designation with the provision that this scheme terminate good time on October 1, 1995; thereafter, no good time is available. An inmate would be parole eligible after 25 percent of sentence has been served. Mike Salvagni seconded.

Rick's concern is that the effective date is critical. The prison is full, and this will impact prisons. Rick asked for a delay until after the 1997 Legislature starts.

Motion was amended to terminate good time effective January 31, 1997.
MOTION PASSED.

Justice Nelson reported that the District Judges Association appointed a standing committee on Education.

2) Montana Commission on Sentencing

Discussion was held on the new section on page 4 [a] regarding criteria for sentencing guidelines.

Mike Salvagni made a motion that the Council recommend the legislation to create the Montana Commission on Sentencing with addition that the Governor

appoint one person from the Department of Justice and one from the Board of Pardons. The second sentence of subsection (a) of the new section titled ADOPTION OF GUIDELINES FOR SENTENCING needs to change 'promulgate' to 'propose' as follows: "If the commission determines that sentencing guidelines should be adopted, the commission shall, on or before October 1, 1996, propose sentencing guidelines for the district courts." Motion was seconded.
MOTION PASSED.


VII. General Business

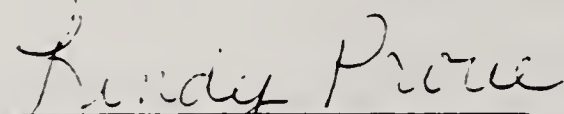
Judge Sherlock requested that the minutes be sent to everyone, with a cover letter and attachments of proposed legislation. It was decided to hold a telephone conference sometime in November.

Judge Sherlock thanked everyone for attending. The meeting adjourned at 4:15 p.m.

Minutes were approved by Honorable Jeffrey M. Sherlock, Chairman of the Governor's Advisory Council on Corrections and Criminal Justice Policy.

Respectfully submitted,


Julie Buchman


Lindy Proue

MINUTES
GOVERNOR'S ADVISORY COUNCIL ON
CORRECTIONS AND CRIMINAL JUSTICE POLICY
Telephone Conference
Tuesday, November 29, 1994

A telephone conference of the Governor's Advisory Council on Corrections and Criminal Justice Policy was called to order by Mike Salvagni at 10:00 a.m., on November 29, 1994.

Members Present:

Mike Salvagni, John Strandell, Frank DiFonzo, Dana Donahue, Linda Hickman, Earl Peace, and Lt. Jim Cashell.

Honorable James Nelson and Honorable Jeffrey Sherlock joined the conference call later.

Members Absent:

Honorable Ted O. Lympus, Bud Walsh, Candyce Neubauer, Mike Lavin, Steve McArthur, Bill LaBrie, John Connor and Bill Smith

Others Present:

Rick Day, Dave Ohler, Jan Bouchee and Julie Buchman

Mike Salvagni initially chaired the meeting.

The minutes of the October 5, 1994 meeting were reviewed and one change was made adding Mike Salvagni to the list of members present. Minutes were approved as corrected.

The purpose of this meeting was stated - to review and/or approve draft legislation prepared by Dave Ohler. Dave Ohler stated none of the draft legislation had been finalized by the Legislative Council.

OBPP BILL #78 - SEX OFFENDERS

Earl Peace questioned Section 7, Item 4d - The victim does not object to releasing the offender from the duty to register.

It was generally felt this was putting the victim in control of the offender registering and that the court should request a statement from the victim.

Earl Peace made a motion to eliminate Section 7, Item 4d and add a new item wherein the court will consider a victim's statement before dismissing the offender from registering. Frank DiFonzo seconded and the motion passed.

OBPP BILL #6A - CREATING COMMISSION ON SENTENCING

Section 2, [e](iv) - One law enforcement officer

Jim Cashell and John Strandell will present this to the Montana Sheriffs and Peace Officers Association and have this read one chief and one sheriff or something along that nature.

After discussing, a motion was made by Jim Cashell to expand the makeup of the committee to 9 people including 1 sheriff and 1 chief of police. Frank DiFonzo seconded and the motion passed.

Earl Peace questioned the length of time in existence and a budget for the Board. Mike Salvagni and Rick Day clarified the Board would only exist for two years and a fiscal note will be attached to this bill when it is introduced to the Legislature. The budget had not been developed yet.

Honorable Jeffrey Sherlock joined the conference call.

OBPP BILL #6B - TRUTH IN SENTENCING

Mike Salvagni pointed out an error on page 3 under section 46-23-201. Initially read "Subject to the restrictions contained in subsection (2) through (5)", but should read "subsection (2) through (4)".

Mike Salvagni asked for clarification of Section 9 - 53-30-105 - "The department of corrections and human services may grant a good time allowance to inmates housed at an adult correctional facility or a supervised release program facility, and to implement subsection (5)". Does this mean good time allowance that the Department can give credit for would only apply to subsection (5) of that statute concerning the population exceeding the design capacity of the facility. Dave Ohler explained this would include both the grant of good time pursuant to subsection 5 as well as the granting of day for day good time.

Jim Cashell asked if the above good time formula could be implemented in the county jails. Mike Salvagni personally felt this would require a separate and complete review, and no further discussion was held.

Judge Sherlock asked if OBPP Bill #6B provided there would be no good time after January 31, 1997. Dave Ohler and Rick Day pointed out that Section 12 repeals Section 53-30-105, MCA, the good time statute and Section 13 stipulates Section 12 is effective January 31, 1997.

Rick Day asked if the Council would be interested in revising the title of the act for OBPP Bill #6B. The title begins with "Deleting the designation of criminal offenders as dangerous and nondangerous", and the true essence of the bill which is cleaning up the sentencing statutes is lost. Rick suggested changing the title of the bill so that it would project the whole concept of the bill. It was agreed rearranging the title and some re-wording would suffice as long as we were in compliance with the constitution.

Mike Salvagni relinquished his vice-chair to Judge Sherlock.

Rick Day presented to the Council some data he had obtained to draft the Truth in Sentencing legislation. Public sentiment that inmates in the Montana system are not serving a very long percentage of time and why don't inmates serve 100% of their time.

Montana's average sentence length in 1993 was 153 months
(longest average sentence length of the eight Mountain West states)
(nationally ranked 4th if not higher in sentence length)

Montana's average release length of stay is 44 months
(longest average length of stay for released prison inmates in the eight Mountain West states)

Montana ranks 4th out of Mountain West states in percent of sentence served in the eight Mountain West states even though the State has the longest average length of stay.

If legislation is amended to require 100% of sentence served, given current sentencing structure, it would add 1,112 inmates to the normal prison increase population by the year 2000. Prison construction would have to begin and be continuous in 1996 from about 30 to 40 million per prison and 7 million to operate each prison. Would be looking at 112 million over the next two bienniums.

This was presented to the Council to show what our proposed legislation can accomplish, and to simplify and clarify sentencing criteria - to bring length of stay and length of sentence closer together.

John Strandell asked if the above data concerned violent offenders and Rick stated violent offenders have a longer length of stay and the 44 months was just an average.

Rick Day also shared with the Council a letter to the Governor from Judge Larson regarding questions about elimination of the dangerous and non-dangerous offenders and some suggestions regarding good time. He asked for approval from Judge Sherlock to forward a copy to him and for Judge Sherlock to telephone Judge Larson in regards to his questions. Judge Sherlock approved.

OBPP BILL #6B - TRUTH IN SENTENCING

Dana Donahue questioned Section 10, subsection 3 - "Able-bodied persons committed to the Montana state prison as adult offenders shall be required to perform work as provided for by the department of corrections and human services." Would it allow for any exceptions to those inmates enrolled in intensive programming. Dave Ohler stated that the Department has the authority to require inmates to work, but has the discretion to not require inmates to work if involved in intensive programming.

OBPP BILL #7A - DNA REGISTRATION

Frank DiFonzo asked if the proposed legislation limited the State to one type of testing. Dave Ohler stated that one was preferred over the other in our discussions, but the legislation did not lock the State into specifically one type. Frank also questioned Section 1(d) and if this legislation

locks the State into the State lab being the only one to perform the testing, but this legislation does not prevent the State lab from sub-contracting. Dave Ohler stated he would look further into this legislation and correct accordingly.

Judge Sherlock asked Rick Day about timelines for submitting legislation to the 1995 Legislature and whether this Council would be meeting again. Rick Day stated the reason for this meeting was to confirm Council's position on legislation, make final changes, and then prepare a final report to circulate to the Council members for sign off. If a Council member finds an error in the final report, it can be decided then if we should meet via a teleconference or meeting.

OBPP BILL #7B - SEXUAL OFFENDERS

Frank DiFonzo asked if legislation could be drafted regarding a notification law of sex offenders moving into a neighborhood. Judge Sherlock advised we had this conversation previously and the Council agreed to notification if the Department felt it was necessary. This issue is addressed in OBPP Bill #7b in New Section 9, and the burden is on the Department to issue notification.

John Strandell asked how the Department planned on handling notification of a sex offender being released into the community. The legislation states the Department will petition the Court and the Department will need to develop policy on this issue. The Department would petition the court in the area where the offender will be residing for the right to release this information and to give advance notice to the public. Law enforcement would directly be notified and would most likely be involved in the petition process. The motion would be filed by Dave Ohler for the Department. Liability is alleviated with the court making the decision and the law enforcement officer acting on the court's decision. Frank DiFonzo expressed concern about the public being notified before the offender moved into the neighborhood instead of after. Rick Day suggested changing the wording in the legislation from the Department may to the Department must petition the district court (OBPP Bill #7b, Section 9, subsection 3). He also suggested incorporating wording to include notification prior to release from prison.

Earl Peace questioned the petition being filed - would it be a burden to the court. If the petition is filed in the court where the person is residing, most inmates reside at Montana State Prison and this would be a burden on Judge Mizner. It was decided that the petition will be filed in the county where the inmate will be residing.

Rick Day stated the sex offender register is available to the public, but we could also petition the court when the sex offender is released and make that public information also. This information would therefore not be the burden of the law enforcement agency to publish.

Discussion was had regarding what steps are taken when planning discharge for a sexual offender - e.g. prior notification to neighborhood offender will be residing. Rick stated that prior to release, an offender must have a place of employment and residence (parole plan). Jim Cashell recommended a public hearing prior to release. Dave Ohler felt it would complicate the legislation, there would be a need for time frames for the Department and the district court. Dave Ohler agreed to look into this suggestion of drafting a statute requiring public notification of a public hearing on releasing a sex offender into the community. Rick Day also stated a

summary of how Probation and Parole handles placement and parole of a sex offender would be sent to the members of this Council.

Judge Sherlock asked that new statutory booklets be sent to each member of the Council, and there arose a need for further discussion, we would set it up at that time. Rick Day stated the packet would also include a draft letter from the Council to the Governor explaining the legislation. Rick Day and Judge Sherlock will draft this letter.

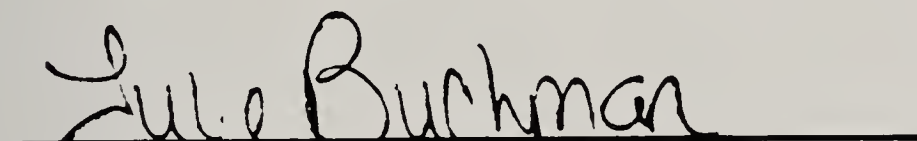
Rick Day then updated the Council on the Mickey Gamble issue. He confirmed that Mickey Gamble resigned effective November 3, 1994, he did stay at the Department until November 7, 1994 cleaning up loose ends, and he is no longer employed by the State of Montana. The Department, in reaction to the Mickey Gamble issue, did initiate several inquiries:

- Financial activities relative to Mr. Gamble;
- Transportation issues that dealt with the Women's Correctional Center, Montana State Prison, and Inmate Advisory Council;
- Classification review relative to Becky Richards;
- Review of administrative inmates and employees at Montana State Prison;
- Review of resocialization activities and policies where inmates go outside the institution; and,
- Review of Department's mission and a close look to see if whether or not victim rights issues should be incorporated in that mission directly.

All above information will be turned over to the Department of Justice, John Connor and Ward McKay. They will also be completing an inquiry on their own, and the results should be public next week. The Council is still in existence, and Rick Day felt the Council may meet again possibly during Legislature and definitely after Legislature to look at new tasks for the Council.

Judge Sherlock concluded the telephone conference at 11:25 a.m. on November 29, 1994.

Respectfully submitted,


JULIE BUCHMAN

MINUTES

Regional Jail Subcommittee

Minutes of Regional Jail Subcommittee Meeting

July 19, 1994 at 1:30 p.m.

Present

Jim Cashell, John Strandell, Rick Day, Jan Bouchee and Julie Buchman,

Glendive Representatives:

Jim Leaf, Patrick Denning, Emily Walter, Doug Barone, Rod Green, Craig Anderson, Hank Lordemann, Darrell Layman and Ed Williamson

Regional Jail and/or Prison Concept is a situation where everyone benefits. On the state level, it means direct expansion of hard cell capacity. The State is not interested in building a large prison facility and is trying to decentralize. Additional positions will not be hired as the regional jails will be locally run but the State will help with any needed expertise. The State wants to locate these regional jails geographically to enable service to all areas of the State of Montana.

John Strandell shared Cascade County's reasons for entering into this concept. The county did not have the local funds to expand and their first two proposals were voted down. With the assistance and cooperation of the State of Montana and Federal Marshalls, the expansion is possible. It is cost effective and cost sharing. With the assistance of the State, county jails will be able to institute programs. This concept has also greatly increased the working relationship between the county and state. John stressed that the current jail proposal would not have a chance at passing if it had not been for the assistance of the state pod.

Mick Gamble expressed his concern with size and efficiency. After a meeting with representatives from Great Falls and staff of Montana State Prison, many questions were answered. The jail population has in the past been ignored where programming is concerned. Now with the state's assistance, the county will be able to offer programming as a preventative measure to crime.

The types of inmates that would be placed in the pods will range from medium to close population. The population will consist of all crimes, but the State is committed to alleviating any problem inmates. The State is looking more at persons interested in programs being offered. Minimum or low security populations will be at the Prison or in community programs. Looking at bringing industry programs in to the pods. All legalities and certifications are in place, just looking for interested communities. Mick extended an invitation to the Glendive community representatives to tour MSP.

The type of contract being drafted is full-time county employees, a guaranteed monthly bed rate by the State, and the State will pay the construction costs of the pod.

There was concern as to what happens if the prison population drops, will the county be left with an empty pod. Mick Gamble reassured the Glendive representatives about the guaranteed monthly bed rate for the State pod, the population at the Prison is over capacity, and the number of persons being rotated through the Prison has increased in the past year from 700 to 1,000.

John Strandell explained that the Great Falls Regional Jail will most likely contract for a guaranteed bed rate of 76 single cells with an option of double cells.

Craig Anderson asked if there is a guarantee for a solid budget from the State, but that is dependent of the 1995 Legislature. Each regional jail pod will be designated a separate amount. Mick offered his affirmation of a clean and solid system within the State's correctional system.

Rick reiterated the rate and demand of housing the criminal population. Over the last year there has been a 40% increase through reception and the prison is still overpopulated and needs to downsize.

Doug Barone expressed concern that the State could run out of money and the county would be burdened with the State pod. Rick Day agreed that this concern is expressed at the state and county level, but John Strandell expressed that when we approach the Legislature with a unified county/state solution, that alone should be more favorable to the Legislature than both entities approaching for separate funds for separate solutions. Jim Cashell asserted that no matter what, it is a gamble for both the county and the state, but the regional jail concept meets four major goals.

- 1) Enlarges jails;
- 2) Provides community corrections;
- 3) Provides space for persons placed under the care of the Department of Corrections and Human Services; and,
- 4) Provides room for federal inmates.

Another benefit is that the regional jails will be locally controlled.

Further discussion was had clarifying the state's and county's commitments. The State would pay for the construction of the pod and contract a monthly per diem rate which is contingent on approval from the Legislature. The county's risk is the county portion of the facility and a budget for said part which needs to be passed by the voters.

John Strandell offered some history on the reasons for Cascade accepted the regional jail concept. Cascade County Jail population is capped and was advised that they were in violation of federal regulations for this capped population. The regional jail concept helps Cascade County remedy their population problem with a new expanded jail and with the State's contribution, it lessens the bond issue amount.

Another topic discussed were the possibility of hidden costs such as medical. John Strandell explained with the State's involvement, he will be able to contract with Blue Cross/Blue Shield to manage the medical portion of the regional jail. He had previously tried for five years to no avail. The State will be responsible for medical costs for their inmates housed in the state pod and the county will be responsible for the programs offered. Rick Day assured everyone that the State was open to discussing the programming costs so there wouldn't be any hidden costs there. Overall, between the county and state they can share a lot of resources and reduce expenses. Cascade County's projected jail will be able to accommodate 164 (double celled) for county and federal inmates with construction costs of approximately 10 million. John also shared that their studies found that a multiple floored building was more costly to run.

Ed Williamson asked what type of education was currently being used in the programs. Mick explained that we were currently using a program called PLATO which incorporates a GED program and such. Jim Cashell shared that any inmate who is active in a school program, OPI is required to provide a tutor.

John Strandell reported that their studies found that the regional pods could cut the cost of transportation in half. Arraignments will be done by video.

Mick advised that the community will actively participate in placement of persons in the community. If the community expresses disagreement with a placement, we will move them to another location.

John Strandell pointed out that the Regional Jail Pods will create needed stable, full-time jobs. The number of staff needed will depend on the design and type of supervision needed.

Mick reasserted the State's commitment to support community programs, make sure central services are adequate, plan ahead to handle expansions and utilize community systems.

The selection process was explained. The State has advised all relevant parties, and if a party is interested, that party is selected. The State is not forcing the issue, but letting interested parties come forward first.

As far as what plan to go ahead with, Dawson County was advised to prepare two plans - one for just the county's involvement and one incorporating both county and state. If Dawson County can get a local bond approved, they should then go forward with a state pod proposal.

Concern was expressed as what to do if other cities within a region express interest in the regional jail concept. It was explained that guarantees could only be give by the Legislature, but it was also shared that the Department of Corrections and Human Services has already built into its budget 3 regional jail facilities.

The question was asked what was the State willing to give and Rick explained that the State will help with program and design to the point the county wants the help, John Strandell can offer advice with his experience, and the State will supply help and stand behind the County for the bond issue.

Getting a needs assessment done by NIC was discussed. It was noted that NIC is currently delaying assessments until November, but Mick is going to check into other options.

Dawson County then discussed past plans of building at the existing courthouse and that past proposals have included the counties of Prairie, Wibaux and McCone. A multi-county concept seemed to possibly be the answer for the less populated counties and more cost effective.

John Strandell pointed out that Cascade County opted for a buy-back of interest in the state pod over a number of years and make it into a county facility. Rick explained that the per diem rate would need to be below the prison rate and should be set so as not to pass expenses off on the county. The State would still provide support for programs even when the pod become a county facility.

Where offenders go after being sentenced will be determined by DCHS, but in most cases those from the area would be placed in the regional facility.

It may be possible to co-locate related offices like probation and parole and highway patrol.

Rick felt there will not be major statutory changes made with the inception of the regional jails. If any proposals are made, they will be presented to the Council. The Board of Pardons will need to have some work done, and the authority of judges will not be changed. We may need to make some changes in the technical definitions of the Montana State Prison.

Rick explained what the Legislature previously authorized for correctional facility expansion.

\$20 million bonding for expansion at MSP and \$10.75 million for expansion at the Women's Correctional Center of which only \$4.1 million was used.

Time guidelines: DCHS time frame is dependent on bond approval before Legislature meets in January, 1995.

Glendive representatives explained that they were going to have their first task force meeting on this issue July 21, 1994. John Strandell explained that it took Cascade County 1 1/2 years just to create a conceptual plan.

The next issue discussed was the impact on social services in the area a regional jail in built. Mick explained that on the average, only 2% of the inmate population have families that take up residence in the area they are housed. The impact is there, but these people are already in the community.

Dawson County representatives asked what would be an acceptable minimum design. It was explained that a bed count of 30 would be acceptable, but that a bed size of 76 single cell with a possibility of double cell would be more beneficial. A 76 pod worked best with staffing and it was felt the same amount of staffing would be needed for a 30 bed as for a 76 bed.

The meeting adjourned at 3:15 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Julie Buchman", is written over a horizontal line.

JULIE BUCHMAN
Administrative Assistant

MINUTES

Sex Offender Subcommittee

**Joint Meeting Between
Governor's Advisory Council on Corrections & Criminal Justice Policy
SEX OFFENDER SUBCOMMITTEE
and Department of Corrections & Human Services
SEX OFFENDER TASK FORCE
June 9, 1994, 1:30 p.m.**

ATTENDING:

SEX OFFENDER SUBCOMMITTEE Members:

Mike Salvagni, Chairperson; Bill Smith, Earl Peace

SEX OFFENDER TASK FORCE Members:

Cathy Redfern, Chairperson; Sandy Heaton; John Thomas, Board of Pardons
Chairperson

OTHERS PRESENT:

Dave Ohler, Legal Counsel, Department of Corrections & Human Services

Lindy Proue, Administrative Support, Department of Corrections & Human Services

HANDOUTS:

Sex Offender Registration: A Review of State Laws, Washington State Institute for Public Policy, Roxanne Lieb and Barbara E.M. Felver, May 1992. 16 pp.

Crimes and Punishments, Washington State Law, (9.94A.030) 4 pp.

DNA Legislation, California Senate Bill, No. 1408, Introduced by Senator Hart, March 9, 1989. 8 pp.

A joint meeting was held between the Governor's Advisory Council on Corrections & Criminal Justice Policy Sex Offender Subcommittee (SOS) and the Department of Corrections & Human Services (DCHS) Sex Offender Task Force (SOTF) on Thursday, June 9, 1994, at 1:30 p.m. in the Board of Pardon's Conference Room at Montana State Prison.

PURPOSE OF MEETING

Cathy opened the meeting by explaining that the Sex Offender Task Force has a deadline of next week to decide where they are heading for recommendation on legislation regarding sex offenders. August is the deadline for DCHS to let Governor Racicot know what bills we're looking at. The purpose of this meeting is to share information between the SOS and the SOTF regarding sex offenders.

Mike Salvagni noted that he's still not sure of the Sex Offender Subcommittee's mission -- this is the first meeting it has held and we are here today to get a sense of direction of which way to go. It would be a waste of time to duplicate task force efforts. Cathy said she would send copies to Mike Salvagni regarding what the Task Force does.

LIFE TIME SUPERVISION

Mike Salvagni asked who started the lifetime supervision notion. Cathy said that Mickey did as part of package DCHS wants to take to legislature. Mickey created the DCHS Sex Offender Task Force and the Governor created the Governor's Advisory Council on Corrections & Criminal Justice Policy (GACCCJP). Mickey came to the first GACCCJP meeting to ask a subcommittee to look at issue.

The Task Force looked at Arizona statutes. Arizona has a registration process where a sex offender is required to register within the county. Arizona's registration is for life--Montana's is ten years, but we are looking at life time supervision and will probably present idea to Task Force. The way this would work is a two-time sex offender would be sentenced for life, with a certain portion suspended. This would allow the board to impose conditions such as not living near a school or daycare, or not working with children. First offense would be up to the judge; second offense would be mandatory supervision for life. A record in other states would count. It was noted that incarceration time would not change; however, a repeat sex offender would go out into the community with supervision.

Sandy noted that she had invited the president of the Montana Sex Offender Treatment Association (Andy Hudak) to today's meeting but he was sick. Sandy relayed what he said to her: MSOTA supports lifetime supervision. It's important to tie in treatment as part of legislation so offenders don't slip through cracks. Treatment providers in community could take up part of monitoring process and work with P&P, and everyone would know what everyone else was doing. Treatment can do things that P&P can't, such as ask for polygraph, request offender to come in more often if under stress, etc. MSOTA recommended that law be written so that sex offender would have to stay in treatment. If treatment provider is suspicious, that information would be give to P&P and then decide what to do. This could be a system that works well together, but if not written in law, offender doesn't have to go to treatment. This would put extra meat to it, ties in more, and takes pressure off P&P. If sex offender is not doing well in the community, he could be sent back to prison.

Andy suggested house arrest by treatment providers. He uses secretary (cheap labor) to check on person rather than ISP. Lots cheaper. Uses polygraph. Very satisfactory option for lower risk offenders. Something to look at.

Individual will have to register in community for life of sentence. There will be control over where sex offenders work (childcare facility, etc.), where live (by victim, school playground, etc).

John Thomas discussed the seriousness of repeat sex offenders but noted that there is no real control over. They cannot be cured, only controlled, so it must be a lifetime process. He discussed Arizona--if they violate, judge sends them back to prison.

Mike Salvagni asked how many more probation officers would be needed to supervise for life. That will be a question that comes up a lot. Cathy had talked to Mike Ferriter, Chief of the Probation & Parole Bureau, and he felt lifetime supervision would not significantly impact their case load if they are given the additional FTEs they are requesting for the coming biennium--that P&P could handle with not much extra work, and if treatment providers share, the state won't have to pay for it. Repeat sex offenders is not a high percentage of inmates so we're not talking about a lot.

Discussion was held regarding whether the public would support lifetime supervision. It was felt there may be a need to present concept to and educate the public. John Thomas had asked some people their opinion of lifetime supervision and all felt the State should have been doing this a long time ago.

People in community want sex offenders to go to prison and stay there, but then get anti-tax people in legislature. No matter what sentence is given, offender will get out. Ones that do come back for technical violations, have a pattern, not just one. Bill Smith feels there is a real problem with perception; need to educate people. Public doesn't understand criminal justice system. A lot of misunderstanding about the system.

Do we need to address right to vote, hunt? Never done with lifetime supervision. Maybe some rights could be restored - way law is written.

A way to approach this may be to figure out a sentence that ends up to be life: example: a 50-yr old could get a 40-year sentence. May have to increase the maximum for an offense (ex: incest 20 years??) Have a better sense of what's going to happen when they get out. When go in, don't have any idea when they will get out. Public will know that inmate will be supervised even when they get out. This program would be based on successfully completing treatment in MSP. Don't think anyone will be against this lifetime supervision idea.

GENERAL DISCUSSION REGARDING SEX OFFENDERS

Discussion was held regarding general information about MSP's sex offender population. There are around 400 sex offenders presently at MSP. Of those, 119 are non-compliant with treatment, or started and quit. About one-third have a potential to leave MSP without treatment.

Sandy said statistics show that the highest risk for reoffense is within the first six months. Next cluster of reoffense is 15-20 years later (possibly because grandkids).

Sandy feels there is a need for legislation to extend length of treatment for lower levels of offense (indecent exposure, violation of privacy) as there is no teeth in getting these violators into treatment. These crimes may look innocent, but are often progressive. She would like to see indecent exposure be a felony on third time.

Ted Clack has information on repeat offenders. Incest is lowest risk for reoffending. Rape is highest - respond less to treatment. Some misdemeanor crimes are real high for reoffending.

Get a 50% return rate for sex offenders. Average sentence is five years. Half of time is spent on P&P. How many sex offenders are discharged? 1 of 4.

A whole lot of offenders who never come to prison. Would like to see on supervision. Not high profile, but a lot of them in community. Cathy stated she feels good about a lot of guys in treatment, but sooner or later they get out of prison and out of treatment; what is happening with them? Lots of times offenders are coming into MSP but they should have remained in community. Need leeway to look at person first time around.

DNA REGISTRATION

DNA registration was discussed. If can get fluids, DNA can be done. Same test would be kept on file in Missoula at the Forensic Lab. An example was given of how DNA registration would work: A woman was raped last night or six weeks ago. Police get sheet with substance on it, make DNA analysis, send to Forensic Lab, can identify if individual has been in system. But have to have a conviction first to DNA test. Or may have a suspect (victim and a sample can do). Need an act of law to be able to DNA test everyone, set up a depository at Missoula Lab, then get a sample from every sex offender and send in DNA to lab. Like a fingerprint on file. Gives a very positive statement this person has been in the area. Really important.

It works to help identify a suspect but also can clear an individual. DNA registration could clear an individual who is suspected just because everyone in the community knows he is a sex offender.

California has been tested regarding legal aspects, and it was OK. Nobody is challenging it. DNA gives us that much more strength. If we could up the rate of convictions it would help.

Discussed cost: can't be that much, but is worth it for the trauma caused to victim. (Jack Thomas said that the emotional trauma to a rape victim sometimes lasts a life time.)

Who would pay? Depending on way bill is written. State would probably pay for all incarcerated inmates. County for a suspect.

DISCUSSION REGARDING DISCHARGE OF SENTENCE

Can it be addressed that parolees go into Pre-Release Center first? Not legally.

People on parole must pay for own treatment, gets more out of it. No burden in state to pay. If person doesn't secure treatment, in jeopardy of coming back to MSP.

Suspended time is conditional on successful treatment. Example: a person is high risk, judge gives life - suspends all but 20. Comes here for his 20. Discharging would be an obsolete term for sex offenders. Couldn't be discharged until program is completed. Mandatory treatment once released. Should write in bill that treatment is part of sentence. Stay in treatment forever. Presently, an 25% of sex offenders discharge their sentence. If want a parole, they will do program. But sentence of 10 years, can be out in 5 with no treatment.

CONCLUSION

Need to write a bill to protect victim as well as person who is offending. Write bill, then ask for a cost analysis from person in Department. Can give war stories by the dozen to support bill. Don't want different groups presenting bills--need just one. GACCCJP is main group to put together bill. We all have one goal, want same thing. We need to have a bill that embraces all concepts brought up here and others.

We all have to work in unison (Judge, police, Department, BOP) . Need to communicate between all parties involved.

Cathy said she will get information and send. She will keep the Sex Offender Subcommittee informed. She thanked everyone for coming.

NEXT MEETING

The next meeting of the Sex Offender Subcommittee will be in July in Helena. Mike Salvagni will notify members of exact date and location. One member of the Sex Offender Task Force will attend.

Meeting adjourned at 4:00 p.m.

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MINUTES
SEX OFFENDER SUBCOMMITTEE
July 20, 1994

ATTENDING:

MEMBERS:

Mike Salvagni, Chairperson; Bill LaBrie, Mike Lavin, Steve McArthur, Earl Peace, Bill Smith, John Strandell.

Member Not Present: Bud Walsh

DEPARTMENT OF CORRECTIONS & HUMAN SERVICES:

Rick Day, Mickey Gamble, Mike Ferriter, Dave Ohler, Jan Bouchee, Lindy Proue

OTHERS PRESENT:

John Thomas, Board of Pardons

Andy Hudak, Chairperson, MT Sex Offender Treatment Association

Sandy Heaton, Sex Offender Task Force, Montana State Prison

Evelyn Picket, Victim Assistance, Butte-Silver Bow County Attorney's Office

HANDOUTS:

Registration of Sexual Offenders (46-23-501 through 507, MCA)

Large packet containing information regarding sex offenders in Arizona, such as criminal code, probation conditions, treatment programs, contact with minors, sexuality/paraphilia classes, presentence report, and field officer protocol. Also included is an article entitled, "*Sex Offenders. Prevalence, Trends, Model Programs, and Costs*" by Lori Koester Scott

Written comments (7 letters)

The second meeting of the Sex Offender Subcommittee was held on July 20, 1994, at 1:30 p.m. in the conference room at the Department of Corrections & Human Services in Helena.

I. WELCOME AND INTRODUCTIONS by Mike Salvagni

Mr. Salvagni opened the meeting and welcomed everyone. He reiterated that the function of the subcommittee is to make a report back to the August 17 Governor's Advisory Council meeting regarding lifetime supervision and lifetime registration of sex offenders, in order to put together legislation for the 1995 Legislature.

Mr. Salvagni then discussed the handouts. He encouraged everyone to read the article by Lori Koester Scott regarding Sex Offenders (page 49). He also handed out the current Montana law regarding registration of sex offenders, and seven letters of comment.

II. REPORT FROM DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES AND SEX OFFENDER TASK FORCE REGARDING LIFETIME SUPERVISION OF SEX OFFENDERS AND SEX OFFENDER REGISTRATION - Rick Day, Mickey Gamble, Sandy Heaton

Rick Day discussed the concept to provide district judges the option of sentencing sex offenders to lifetime supervision. Judges would retain the current sentencing options including sentencing to prison. Lifetime supervision is not intended to be lifetime in prison. Discussion was held on whether it should be a second time offense. This needs to be addressed.

Mickey Gamble added that denial and minimization is a problem the treaters deal with. Sex offending is an addiction. Offender often goes from one place to another and commits same crime. Mickey is very supportive of the idea of managing offender locally. It would be our advantage to be able to manage for a lifetime. We aren't approaching this from negative fear factor, but a positive factor. We believe sex offender can be treated successfully in community. The sex offender must accept responsibility. But if they choose to not be treated, we would have authority to hold them where they are not a threat to the public.

Sandy Heaton added that she is very supportive of lifetime supervision. Offenders often lead double lives; the more light that is shed on offending, the better it can be dealt with. Risk to reoffend is always there, but we try to lower, and the sex offender will be more successful.

Rick emphasized that if the subcommittee has a negative opinion, that they also make that recommendation.

Bill Smith asked what the necessity is for this legislation. Just Arizona has it; 49 states don't. Mick answered that the State of Washington has legislation allowing them to hold a sex offender until no longer a threat to society. Other states are beginning to move in this direction. This option strengthens the program. Presently, sex offender registration is 10 years from the time they get out of prison.

Rick discussed crime rates. Sex offense shows an increase. What can be done to provide more public safety? The best area of success is when we provide close levels of supervision. To take this approach allows increased success and flexibility. At MSP there are about 30 inmates considered ready to move into the community if we had a program available. The concept is not to provide lifetime incarceration. Presently, at end of sentence, inmates who refused treatment and discharge their sentences are let out with no supervision. With new legislation, the judge would decide if lifetime registration or supervision is appropriate.

Discussion was held regarding whether this legislation would increase the workload for police departments, parole officers, etc. Rick said not necessarily and budget proposals request additional P&P officers. Steve McArthur added that sex offenders would be monitored by local P&P officers. Additional training is on the agenda, and some has already begun. We are working on additional funds to provide treatment.

Mike Ferriter discussed the effect on the P&P system: 5,000 offenders are currently under supervision in Montana, and there are an increasing number of sex offenders coming out of prison. He is not overly concerned with what lifetime supervision would do to the numbers. Historically, legislature has been responsive to needs for more P&P officers. Now is the best shape P&P office has been in. They are in a good position now to deal with lifetime supervision. There is an average statewide caseload of 82 clients per officer; this needs to be lowered to 50 clients. Recently P&P was redesigned. There are seven levels of supervision. Level 1 is intensive, almost daily monitoring (P&P officer has 13 clients). Level 7 is the lowest level - contact once per year in writing to see if reoffended. Mr. Ferriter believes eventually some offenders would end up on lowest level.

The Department plans to work with MSOTA to train P&P officers relative to sex offenders so there would be specialized P&P officers to deal with sex offenders (smaller case load, trained to recognize warning signs).

Treatment was discussed. The Montana Sex Offender Treatment Association (MSOTA) could reach consensus on monitoring programs. P&P would only become involved when person wasn't complying to treatment. P&P would call treatment provider when they see a potential problem with a sex offender. It would also be cheaper in the long run for sex offender to receive treatment in community rather than to be in prison.

Rick Day summarized that this is a 3-pronged approach. Legislation is the legal kickoff. We need treatment funds - there are limited funds for community sex offender treatment programs. We need to increase P&P. The basic procedures may not change, but we would provide more tools to ensure more sex offenders are successful and remain successful for life.

III. DNA REGISTRATION - John Thomas

John Thomas reported for the Legislative Task Group. They believe the Montana legislature should consider legislation to establish DNA files of known sex offenders' genetic patterns.

Deoxyribonucleic acid (DNA), found in cell chromosomes, is unique for every individual except identical twins. Thus, it offers the potential to make positive identification from blood, semen, hair or tissue samples found at a crime scene.

The FBI is beginning to utilize DNA analysis. Also, 26 states have laws that allow DNA testing of convicted sex or violent offenders.

DNA testing would also provide information that could clear previously convicted sex offenders.

It is important to have a standardized approach to DNA typing in Montana to allow for quality assessment of the technology which will assist in the introduction of DNA into the Montana court system. Samples would be analyzed by the laboratory in the Forensic Science Division of the Department of Justice, and the DNA information maintained in a database there. If the suspect's DNA information is contained in the database, their name will come up as a suspect. Only law enforcement agencies would have access to the information contained in the database.

Mr. Thomas concluded his report with the recommendation that legislation provide for the collection of samples from all existing correctional populations at the time of their release from the institution.

Earl Peace brought up the fact that there are two types of DNA testing: one is very labor intensive (6-8 weeks), and pinpoints individuals closely; cost for three samples is \$3,000. The second test is less expensive, less accurate; can pinpoint within 11% of population. He thought blood type gives almost as much info as less expensive blood testing. Need someone to explain differences, cost, value.

Mr. Thomas recommended that we follow the FBI system. He suggested that Jim Streeter (Forensic lab) can break it down to where we can understand it.

IV. PRESENTATION BY MONTANA SEX OFFENDER TREATMENT ASSOCIATION (MSOTA) - Andy Hudak, Chairperson

Andy Hudak discussed lifetime supervision of sex offenders. He asked sex offenders what they thought about it: some felt it might possibly help them not to reoffend. They stated they 'know society loves to hate us, but what about us who have turned around our lives? If we are not reoffending for 5 or 10 years, can we get back some privileges such as hunting or voting?' Andy stated it is important to understand the way offender's work. We don't know how treatment works until offender gets out of prison. We lose because they challenge us. We have no lever, and a significant number begin to fall apart. If we had control, we'd say, "We'll discuss that with your P&P officer." The offender would be held accountable. On an outpatient basis, we take risks that make us uncomfortable.

In 10 years, Andy has only had one client reoffend. It is very important that the offender accept responsibility.

Sandy Heaton stated that we don't know what is going to trigger a new cycle of offending. We need someone there to catch it (supervising). It is critical to find appropriate treatment in community. Therapists must meet standards.

Andy stated that it is not economically feasible to treat adult offenders in private practice. Most Offenders don't keep current on account. They also many times are ordered to pay victim's therapy. There is no state subsidization. It costs between \$3,000-\$6000 per year per offender, which is cheaper than treating the sex offender in prison (not to mention the cost to the victims). It is a preventive element by having offender in treatment. We have to balance cost to the benefits.

Mike Ferriter stated that the Department is going to ask for subsidization to supplement private treatment (\$20,000/region - \$100,000 total).

Evelyn Picket expressed her concern that a very low percentage of offenders actually pay for the victim's treatment. Discussion was held regarding our (society's) responsibility to help the victim. Theoretically, offender should pay, but realistically, offender doesn't have money. But it would help to have lifetime supervision. Possibly all offenders could pay into a victim fund. Some money could be generated but it all comes back to ability to pay. The longer an offender is out of prison, the more able he is to generate money.

Andy Hudak asked the subcommittee to consider putting some teeth in misdemeanors (peeping tom, exhibitionist, obscene phone calls). These are very underrated forms of problems, particularly the exhibitionist. From a treatment provider opinion: make them all felonies, it is part of a pattern.

V. SUBCOMMITTEE DISCUSSION AND ACTION - Mike Salvagni

Mike Salvagni said there are three items the subcommittee is considering: lifetime supervision, lifetime registration and DNA registration. We should recommend to the Governor that these three issues be pursued.

DNA REGISTRATION: **Mike Lavin** moved that the Subcommittee promote DNA registration. **John Strandell** seconded the motion.

Discussion was held regarding this issue. Cost of registering all MSP inmates was discussed. Technicians in the forensic lab are already in place, but would need one more. It looks feasible financially. **Mr. Salvagni** stated that he is a firm believer in DNA registration.

THE MOTION CARRIED UNANIMOUSLY.

LIFETIME SUPERVISION: **Bill Smith** made a motion to adopt the lifetime supervision concept with special emphasis on funding for outpatient treatment. **John Strandell** seconded the motion.

Discussion was held. Lifetime supervision should be separate than lifetime registration. Presently, the sex offender is responsible for registering himself when he moves to a new location. This is not being done consistently. Lifetime registration may be more encompassing than lifetime supervision.

THE MOTION CARRIED UNANIMOUSLY.

LIFETIME REGISTRATION: Bill Labrie made a motion to consider lifetime registration. Steve McArthur seconded the motion.

Discussion was held. Fiscal impact would be minimal as it would be just a matter of filling out a form.

Mike Ferriter stated that offenders who committed offense prior to 10-yr legislation are not required to register. We need to deal with that. Mr. Ferriter suggested that every sex offender presently in Montana be required to register except those with no record. It should be part of conviction to register. The offender should be registered by system, not themselves. It would be good to pick up those not on system now because of grandfather clause.

Advocating increasing penalties for non-registration was suggested. Lifetime supervision will have effect on lifetime registration. Some offenders not supervised will be required to lifetime registration.


MOTION CARRIED UNANIMOUSLY.

Misdemeanor issue: Mike Salvagni deferred misdemeanor issue to a further date as more information is needed. Subcommittee will seek advice from Council regarding this issue.

Next Meeting: Mike Salvagni said there is no need to meet before the August 17 Governor's Advisory Council meeting. At that time, this subcommittee will report to Council that we've studied the issues and propose that we proceed with legislation to adopt programs, then work on substance of legislation.

Mike Salvagni thanked everyone, and the meeting adjourned at 5:00 p.m.

Respectfully submitted,


LINDY PROUE, Administrative Support
Director's Office, DCHS

MINUTES OF SEX OFFENDER SUB-COMMITTEE

Governor's Advisory Council on Crime and Criminal Justice Policy

September 28, 1994 at 9:00 a.m.

ATTENDING

MEMBERS:

Mike Salvagni, John Strandell, Mike Lavin, Earl Peace, Steve McArthur, Bud Walsh

MEMBERS NOT PRESENT:

Bill Labrie, Bill Smith

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES:

Rick Day, Dave Ohler, Julie Buchman, Jan Bouchee, John Huth

OTHERS PRESENT:

Jim Oppedahl, Department of Justice

Jim Streeter and Julie Long from Crime Lab

The meeting of the Sex Offender Subcommittee was held on September 28, 1994 at 9:00 a.m. in the Director's Office Conference Room at the Department of Corrections and Human Services in Helena.

WELCOME AND INTRODUCTIONS

Mike Salvagni, Chairperson

Mike Salvagni opened the meeting with introductions and reviewing the materials sent under a memo dated September 20, 1994.

Prior to Jim Oppedahl's presentation, Mike Salvagni reiterated Frank DiFonzo's concern as to whether we should have Lifetime Supervision or Lifetime Registration. Discussion was had regarding registration being coordinated between the Department and Criminal Justice Information Network (CJIN). It was hoped that Jim Oppedahl's presentation could clarify this concern. The Department currently maintains a registration of sex offenders which is public information, but access to this information was not widely known.

CRIMINAL JUSTICE INFORMATION NETWORK (CJIN)

Jim Oppedahl

Jim Oppedahl, Administrator for Computer Services and Planning Division of the Department of Justice, was introduced. He manages CJIN and understood we had concerns regarding a sex offender registry. He first explained what CJIN is and where it is going. CJIN is used by sheriffs, police, federal agencies (FBI, BIA) and state agencies (family services and FWP), and CJIN can access the mainframe computer. CJIN is a network which provides communication of information to users. This information includes a criminal history records program, fingerprint ID, age, and scars. CJIN can access the stolen vehicle file, wants and warrants file, and hot files. With CJIN being connected to the State's mainframe computer, it can also access the driver control, driver licensing and motor vehicle title and registration files. CJIN brings in information and sends it back out, gets information from the National Crime Information Center (NCIC) FBI Center, and is also capable of accessing through Phoenix and then the appropriate state when dealing with an out-of-state stop by an officer. CJIN is networked within the state except for five counties. CJIN was first a teletype system, but in the next two to three years, it is anticipated to add the NCIC Visions 2000. This new version will be more flexible. For example, a name search will not have to be identical to match and photographs can be attached to text back and forth. CJIN wants to make information available directly to police cars. CJIN also works with Western Interstate Network (finger ID). This system helps police make positive IDs.

New federal regulations such as the Brady Bill and the Oprah Winfrey Bill will impact CJIN immensely. Handgun checks will increase to 25,000 per year due to the Brady Bill and background checks of anyone involved with contact with children will be available due to the Oprah Winfrey Bill.

CJIN was originally designed to provide policeman with needed information, but is now moving into non-criminal uses and needed information is becoming more technical such as going back five years and providing a list of sex offenses specifically against children. Currently, CJIN has availability to track sex offenders, but cannot specify information. The database has the specific information, but it needs to be interpreted by human intervention.

CJIN can be interfaced with DCHS. Possibly this new program could flag the Criminal History Record when the person is a registered sex offender, but it will take time to complete and interpret the record. The record also needs to somehow be highlighted if that sex offender has been convicted. If the offender is on lifetime supervision, he needs to be continually monitored and we need to have access to this file. This information would help officers know when a sex offender is trying to skip tracking. The Criminal History Record also needs to identify the county in which the offender is registered, so the officer can know who to contact for further information. Need to be able to track from county to county. Currently, the registration works well with local officers and works well within the county, but faults when the offender moves from county to county. Could changes in address be done locally? Probation and Parole does require confirmation when a client moves from county to county, and is looking at CJIN as a link for the 5 regions.

Registration for 10 years or lifetime is not currently accurate. This registration is only as good as the offender registering. Mike Salvagni said Dennis Taylor stated that the Attorney General's office does support the lifetime registration concept.

FBI is looking at a tracking system also for sex offenders.

Jim Oppedahl advised that he would coordinate between the ID Bureau and CJIN on flagging and/or building a different screen. Jim felt it is possible to flag and ultimately link to another database information for lifetime registration. The information is there, but police officers need access to the information. He assured lifetime registration could be recommended to the Council and that this information could be made available through CJIN.

It may be possible to flag a file and then access the Department's information. For this information to be reliable, it should be mandated that the registration be updated every month or every six months. It could also be mandatory for sex offenders to go through counseling and then we could network with the counselor. Unless there is lifetime supervision, lifetime registration is dependent on the offenders good conscience. The question arose if it would be constitutional to ask for lifetime registration when the sentence has been completed. Lifetime registration is supervision by the state.

Another proposal being submitted is to restrict violent offenders from possessing firearms.

John Huth, Fiscal Officer of the Management Services Division of DCHS, identified the modifications being asked for sex offenders. For the year 1996, \$105,000 has been identified to help the developmentally disabled and seriously mentally ill sex offenders currently being served at MDC, MSH, and MSP and \$110,000 to assist P&P for counseling. For the year 1997, again \$110,000 to assist P&P for counseling and \$114,000 to help the developmentally disabled and seriously mentally ill sex offenders currently being served at MDC, MSH and MSP.

Dave Ohler distributed copies of "PERTINENT EXISTING, MODIFIED, AND PROPOSED STATUTES RELATING TO SEX OFFENDER LEGISLATION". This proposed legislation has incorporated the following:

- 1) Supervision for persistent offenders should be up to the court; and
- 2) Each subsequent offense should provide the Court to sentence the offender to the Department of Corrections and Human Services for life.

It was asked if this legislation should be mandatory or discretionary and Rick Day preferred these provisions to be discretionary.

DNA TESTING

Jim Streeter

The Council has recommended this Sub-committee pursue legislation for DNA registration. Mike Salvagni received information from New York on what was proposed and adopted. New

York strongly recommended that we pursue their proposal and not what was eventually adopted in that State.

Jim Streeter then gave his presentation to help the Sub-committee decide whether or not DNA registration was possible and can we in Montana do it.

Jim Streeter first distributed a handout which showed a record of what samples have been sent to the FBI lab for DNA analysis. DNA analysis costs approximately \$500.00 per sample and analyze blood, semen and saliva. The analysis involves 2 techniques or tests which are not interchangeable (cannot communicate results between RFLP and PCR). The PCR method takes 4 or 5 days for results and the RFLP takes weeks for results. RFLP needs a dime size sample to do an analysis and PCR needs the size of a head of a needle to do an analysis. PCR is preferred in sexual assault instances due to requiring such a small amount for analysis and the extent to which it can analyze. PCR is also less expensive in manpower. Need to figure percent of population that have certain markers in order to build a database. The more markers, the lower the percent. RFLP involves mathematical models, not actual bands. It is hard to analyze whole populations, but when it is between a couple of suspects, identification is possible. Can never have proof beyond all doubt with these tests. RFLP does have more samples to deal with.

Testing needs to follow TWGDAM guidelines such as a technical working group on DNA and analysis methods. Guidelines have been set to assure samples being admitted into court. DNA gives more possibilities than with conventional methods. DNA also increases samples for potential analysis.

Crime Lab is pursuing DNA registration or investigation. They are still trying to determine if it will be cost effective for the Crime Lab to do DNA testing. Currently, the Crime Lab does not have the capability to do DNA testing. The cost for equipment is approximately \$75,000, materials for each test is \$50.00, requires two full-time people to do the testing and testify at court hearings, and requires additional space.

In regards to the DNA registration, samples will need to be done periodically to ensure no one has tampered with the sample. Original will not be the only sample taken.

The Crime Bill currently has identified \$40 million for DNA testing, but it was not known if this money would be available to the State. It was noted that \$1 million should be available in Fiscal 1996. Also, if money is available in the state, do we need to have the program in place before the funds can be accessed. It would take 1 to 2½ years to develop population statistics for DNA testing which is needed before we could start the program. It was noted that the State of Minnesota has a proposal on DNA registration. Information could not be networked, written requests would have to be submitted.

Testing with both RFLP and PCR has become standardized, but still cannot test between the two.

DNA testing would aid in identifying multiple crimes done by same person or different individuals. DNA testing can separate samples and identify foreign samples. DNA testing takes the sample and compares it to other samples on record. Establishment of Criminal Index needs to be within the Crime Lab.

Concern was expressed regarding how stable DNA registration was, how new the program was, and how many standards were already in the program. The FBI started PCR testing in 1992. As more people come into the program, the larger the list of markers will become (old markers are not eliminated, new are just added to existing markers). The equipment used for production and duplication is the same used by all and the steps are stable and not changing. What each state does with a product differs, but everybody is doing the same in getting the product. Changes within the program have currently started to settle down. RFLP is not done by everyone with FBI standards. PCR will be more applicable or adaptable. PCR is more obtainable for labs cost-wise and sample-wise.

The State has considered developing this program on a state regional basis, but no one can determine who should be responsible. Right now the State Crime Lab is sending its samples to Cellmark (a private lab). The State of Idaho contracts with Reno. This was initially done to help finance the DNA testing. The minimum number of stains per victim is three. If we contract with another state, we would also have to send the stains (samples).

FBI is currently doing RFLP, but is working towards PCR.

Adjourned meeting for lunch. Will resume at 12:30 p.m.

PROPOSED LEGISLATION

Life sentencing. Mike Salvagni opened the floor for comments and/or motions.

Discussion was had regarding the draft legislation done by Dave Ohler. Regarding Options A & B, which one did the Sub-committee prefer. Why did we give the judge discretion rather than mandatory. The definition of sex offense differs between page 1 and page 4. Sub-committee needs to decide how they want sex offender defined. Rick Day suggested we choose the option where the judge has the discretion to decide the sentence rather than the sentence being mandatory. Mike Lavin made the motion to adopt Option B wherein an offender may be sentenced with a fine and exempt from parole eligibility on life sentences. Earl Peace seconded. Mike Salvagni was uncertain about in lieu of sentence for fine. Dave Ohler stated he would add "and/or" to the draft legislation concerning a fine.

Mike Salvagni felt, in regards to mandatory sentencing, that we should start on a lower level and then progress. He expressed concern regarding mandatory legislation passing through the Legislature. Maybe there should be a statement that this is available in certain situations. The courts are reluctant to use persistent felony offender, two times and you're out. John Strandell indicated that he liked the mandatory sentence in Option A for 2nd offense child abuse and that it would set a standard around the State for sentencing. The sentencing is very diverse right now. Mike Salvagni believes mandatory is appropriate for 2nd offense child abuse. Rick Day suggested that we could add into Option B life sentence for 1st offense. If we make it mandatory for 2nd, they will get life on 1st. They shouldn't get a second chance. Earl Peace was a little reluctant on mandatory 1st offense. Situations come before court judge has options. All agreed that 1st offense should be discretionary. Rick clarified that a mandatory sentence to the

Department of Corrections and Human Services doesn't necessarily mean the Montana State Prison. Rick Day also asked if the Sub-committee should allow a reprieve after being incarcerated for 50 years and not being a problem. Dave Ohler suggested that in regards to parole statutes someone with life should be eligible for parole after 30 years and should also be fined. Mike Salvagni asked if we wanted to recommend a sentence being changed by either the court, Board of Pardons or Governor. Earl Peace felt it would be a way out for 1 in 1000. Dave Ohler felt it was already possible through clemency. John Strandell indicated he was for the motion if we can add in 2nd offenses. Motion was made to add in a fine, but not eligible for parole and motion was carried unanimously.

Mike Salvagni suggested we could put language in Option B under subsections 45-5-503, 507, 625, 502 (502 and 503 can cover 505) to cover adult offenders receiving a mandatory life sentence for 2nd offense when a child is involved. A persistent offender can be sentenced directly to the Montana State Prison.

Rick Day brought up the concern of BOP liability. Does this extend to the DCHS liability? The DCHS is liable if probationer reoffends, but BOP cannot be found liable. We could place someone out in community without parole, but this could increase the Department's liability. Mike Salvagni didn't see anything different than what DCHS is already doing. It would have to be proven that DCHS was negligent. Dave Ohler said this was the same liability we already have.

Life Registration. 46-23-506

John Strandell opened discussion with being able to notify victim(s) of offender's address. Mike Salvagni indicated that Beth Baker of Victim's Rights says notification is given to victim of when offender is released provided we have the victim's address.

Mike Salvagni opened discussion regarding legislation for offenders registering until their death. It was felt we needed stronger consequences to ensure the offender continues to register. John Strandell and Mike Salvagni suggested a fine of \$5,000 or 5 years.

Mike Salvagni discussed Washington's Public Notification Act (notification to community of a sex offender residing in a community). Rick Day stated that it is not confidential information in Montana now, but we also don't notify now. Mike Salvagni advised that we should do a better job of notifying victims since it can be done, but is not being done. Registration of sex offenders is currently available to the public and law enforcement. Washington State is actually more restricted due to being tied to public necessity for public protection. The offenders address is not public information. Do we need to make a recommendation to Legislature to make confidential criminal justice information accessible to victims? Do we want to make the registration list confidential? Do offenders have a right to privacy? Mike Salvagni asked if the offender was entitled to confidentiality in regards to address and telephone number.

Definition of Sex Offender. John Strandell motioned to adopt Section 2, Life Registration, as stated. Change penalty for a felony to 5 years and/or \$5,000. Mike Lavin seconded and carried unanimously.

DNA Testing. Mike Salvagni opened the discussion stating the whole program is dependent on funding. Should we get the Legislature, Attorney General and Governor's Office to agree to pay for it? Sub-committee felt it was a good piece of legislation. Steve McArthur moved we adopt Section 3 of draft for DNA testing pending changes discussed and availability of funding. John Strandell seconded and motion was carried.

Mike Salvagni asked for changes to the draft legislation be mailed by September 29, 1994 and with an agenda for the October 5 meeting if possible.

Members of the Council were advised about getting State ID for traveling purposes and reminded of the October 5 general council meeting at the State Capitol.

Meeting adjourned at 2:35 p.m.

Respectfully Submitted,

Julie Buchman and Lindy Proue

MINUTES

Truth in Sentencing Subcommittee

DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES



MARC RACICOT, GOVERNOR


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MEMORANDUM

TO: CANDYCE NEUBAUER
FROM: RICK DAY 
SUBJECT: Your June 23, 1994 Memorandum
DATE: July 13, 1994

I apologize for my delayed response to your request regarding the primary objectives behind good time statute revisions. I hope the following provides some clarification:

- 1. The priority is truth in sentencing without an initial effect of increasing prison population or length of stay.*
- 2. Given the priority of truth in sentencing then it follows that simplicity is also important. Consequently, along with the primary good time statute we need to look at a change or repeal of either the life sentencing options or the sections which equate life to thirty years and provide a maximum for other long term sentences of 17 1/2 years. In addition, the statute granting additional good time for prison industries work further complicates good time calculation and accrual.*
- 3. Inmate management and motivation cannot be ignored; however, these issues may be better addressed by ensuring good time accumulates only for successful completion of treatment and other programs in compliance with a treatment/discharge plan agreed to by the offender upon entry to the prison. In addition, elimination of good time accrual for those in max seems to be a necessity.*

I attached a recent editorial which seems to describe the idea. I hope this helps and I appreciate you and your committee's effort to design at least an initial solution to a complex problem.

RD:lp

Attachment

cc: Sally Johnson
Mick Gamble

Truth in sentencing

We totally concur with Governor Marc Racicot's recommendation that the Montana Legislature pass a truth in sentencing statute when they next convene.

Governor Racicot announced his recommendation a few weeks ago among several recommendations for legislation regarding Montana's criminal justice decision.

Most recently in Sanders County two defendants were sentenced for homicide - one to life in prison plus 40 years for deliberate homicide and one for 40 years for mitigated deliberate homicide. Both sentences were deemed appropriate by District Judge C.B. McNeil based on the circumstances of the convictions and the prescribed punishments set forth by the Montana Legislature. We heard very little comment about the length of sentence itself.

What we were frequently asked was how long such a sentence really means. It seems local residents, and Montanans in general, as evidenced by Racicot's proposal, are concerned that when a defendant receives a lengthy prison sentence, they are released well before they have ever served out the term.

And that is generally true and the reasons are many and varied. For example, Montana law provides that in general a person may at a minimum be considered for parole after serving half their sentence. Added to that are time off for good behavior and on top of that are administrative early releases, based on such factors as economics and overpopulation of the prison. Such factors are beyond the control of the sentencing judge. They are established as a result of actions taken by the Montana Legislature either directly or indirectly by rule making authority they grant to the Department of Corrections.

And in many cases the early releases are justified.

But what if Montana is the revelation that in some cases the ratio of time served to sentenced time is 1 to 7. Meaning for every seven years a defendant may be sentenced to serve, only one year is actually served. Montanans are wondering why there is such a big discrepancy. They

expect that a sentence should be as it was pronounced, especially the family of the crime victims.

And that is the gist of Racicot's proposal. As part of the stated sentence, the minimum time that could be served, and still satisfy the sentence, would be announced at the time of sentencing. Then there would be no questions if a defendant was released in a relatively short time. Such an action would serve not to cause longer times served, but to point out how and why a sentence could be shortened. It would, and should, point out that reductions in sentences are a result of statutes adopted by the Legislature or rules adopted by state government. Then if changes are sought by the public, they can petition the legislature for changes, the lawmaking body that holds that authority.

Racicot's proposal, which we endorse, means merely putting all the cards on the table at the time of sentencing. So that crime victims, and the defendant, know exactly what the sentence means or could mean.

The 1995 Montana Legislature would be wise to adopt such a law.

